

HOUSE JOURNAL

SEVENTY-SEVENTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

SEVENTIETH DAY — WEDNESDAY, MAY 9, 2001

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 346).

Present — Mr. Speaker; Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Absent, Excused — Alexander; Brown, F.; Hilbert.

(Najera in the chair)

The invocation was offered by Dr. Robert Welch, senior pastor, Park Hills Baptist Church, San Antonio, as follows:

Please join me in prayer or quiet meditation.

Our gracious heavenly Father, we come before you today recognizing our utter dependence on you. You are the source of all wisdom, peace, and love. We seek your wisdom on behalf of the citizens represented by these honorable people. We humbly ask for your peace to fall on this great state in which we live. Through this body, demonstrate your love that is the greatest of your gifts.

I lift to you Speaker Laney and invoke your purpose on him as he gives guidance to these assembled. Thank you for such a man, for such a time as this.

Forgive us of our sins as we willingly confess them to you. Your mercy toward us is gracious, and when we come as little children, you favor us with your goodness. Make us aware of our own transgressions and give us the grace to forgive those who have sinned against us.

We also pray for your providential protection of the men and women that

serve our state, counties, and municipalities as peace officers. Bring civility to our state and nation. Where lives are broken and dreams are shattered, we pray that you will replace despair with hope. Where anger rages in homes and schools give serenity.

Thank you for this day and for your expression of love toward us by placing us in this wonderful state. Guide decisions that will be discussed and decided today to be honorable in your sight, that our lives will express gratitude for your generosity.

Thank you for these servants of our state. Give these honorable representatives your peace that passes all understanding. Provide for their families in their absence. Sustain them in the labor they undertake. Teach us all to walk in your ways.

We submit this prayer in humility, recognizing that you are, indeed, Almighty God. In Jesus' name we pray. Amen.

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence temporarily for today because of illness:

Hilbert on motion of Haggerty.

The following member was granted leave of absence temporarily for today to swear in new regents at Texas A&M University in College Station:

F. Brown on motion of Hunter.

The following member was granted leave of absence for today because of important business:

Alexander on motion of Averitt.

(Speaker in the chair)

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 49).

HR 944 - ADOPTED (by Hardcastle)

Representative Hardcastle moved to suspend all necessary rules to take up and consider at this time **HR 944**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 944, Honoring Throckmorton High School for its many achievements and for its outstanding record of excellence.

HR 944 was read and was adopted without objection.

INTRODUCTION OF GUESTS

The speaker recognized Representative Hardcastle, who introduced students from Throckmorton High School.

CAPITOL PHYSICIAN

The speaker recognized Representative Hochberg who presented Dr. Stephen Spann of Houston as the "Doctor for the Day."

The house welcomed Dr. Spann and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

(A. Reyna in the chair)

HR 801

HR 801, welcoming the students of the Academy of Travel and Tourism from Thomas Jefferson High School in Dallas to the State Capitol on April 19, 2001, having been previously adopted, was read.

(Speaker in the chair)

HR 964 - ADOPTED

(by Hunter)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 964**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 964, Recognizing the accomplishments of Italian contemporary artist Benini of the Texas Hill Country.

HR 964 was read and was adopted without objection.

On motion of Representative Goolsby, the names of all the members of the house were added to **HR 964** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Hunter, who introduced Benini, Italian contemporary artist, and his wife, Lorraine.

HR 829 - ADOPTED

(by Gutierrez)

Representative Gutierrez moved to suspend all necessary rules to take up and consider at this time **HR 829**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 829, Honoring Colonel Alfredo Longoria, Jr., of Edinburg for his military achievements.

HR 829 was adopted without objection.

HR 978 - ADOPTED**(by R. Lewis)**

Representative R. Lewis moved to suspend all necessary rules to take up and consider at this time **HR 978**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 978, Honoring the Hosanna Gospel Group for its many good works in the State of Texas.

HR 978 was adopted without objection.

HR 979 - ADOPTED**(by R. Lewis)**

Representative R. Lewis moved to suspend all necessary rules to take up and consider at this time **HR 979**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 979, Congratulating the 20 Point Club students at West Orange-Stark Middle School.

HR 979 was adopted without objection.

HR 960 - ADOPTED**(by Tillery)**

Representative Tillery moved to suspend all necessary rules to take up and consider at this time **HR 960**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 960, Honoring Betty J. Haynes of Mesquite on her retirement.

HR 960 was adopted without objection.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, Senate List No. 25).

HR 994 - ADOPTED**(by Janek)**

Representative Janek moved to suspend all necessary rules to take up and consider at this time **HR 994**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 994, Honoring the 2000 Bellaire Little League All-Star baseball team on winning the U.S. Championship of the 54th Little League World Series.

HR 994 was read and was adopted without objection.

On motion of Representative Brimer, the names of all the members of the house were added to **HR 994** as signers thereof.

INTRODUCTION OF GUESTS

The speaker recognized Representative Janek, who introduced members and coaches of the 2000 Bellaire Little League All-Star baseball team, winners of the U.S. Championship of the 54th Little League World Series.

(Hardcastle in the chair)

INTRODUCTION OF GUESTS

The chair recognized Representative Flores, who introduced Esther M. Jimenez and her family.

HR 656, honoring Esther M. Jimenez for her many civic contributions, having been previously adopted, was read.

INTRODUCTION OF GUESTS

The chair recognized Representative Chavez, who introduced Jetta E. Roberts and other members of the Silver Haired Legislature.

HR 593, honoring Jetta E. Roberts of El Paso for her community service, having been previously adopted, was read.

INTRODUCTION OF GUESTS

The chair recognized Representative Haggerty, who introduced the Coronado High School girls golf team from El Paso.

(Speaker in the chair)

BILLS AND JOINT RESOLUTIONS ON FIRST READING AND REFERRAL TO COMMITTEES RESOLUTIONS REFERRED TO COMMITTEES

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

SB 555 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Junell, the house granted the request of the senate for the appointment of a conference committee on **SB 555**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 555**: Junell, chair, Hochberg, West, Gallego, and Christian.

SB 583 - REQUEST OF SENATE GRANTED CONFERENCE COMMITTEE APPOINTED

On motion of Representative Junell, the house granted the request of the senate for the appointment of a conference committee on **SB 583**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 583**: Janek, chair, Dukes, Solomons, Woolley, and J. Davis.

**SB 1596 - REQUEST OF SENATE GRANTED
CONFERENCE COMMITTEE APPOINTED**

On motion of Representative Sadler, the house granted the request of the senate for the appointment of a conference committee on **SB 1596**.

The chair announced the appointment of the following conference committee, on the part of the house, on **SB 1596**: Rangel, chair, J. Jones, Farabee, Goolsby, and Uher.

**PROVIDING FOR A CONGRATULATORY
AND MEMORIAL CALENDAR**

Representative Edwards moved to set a congratulatory and memorial calendar for 10 a.m. Friday, May 11.

The motion prevailed without objection.

SB 187 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Solomons submitted the conference committee report on **SB 187**.

Representative Solomons moved to adopt the conference committee report on **SB 187**.

A record vote was requested.

The motion prevailed by (Record 347): 146 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander; Brown, F.; Hilbert.

HB 261 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Ritter called up with senate amendments for consideration at this time,

HB 261, A bill to be entitled An Act relating to the transfer of a defendant from county jail to the institutional division of the Texas Department of Criminal Justice pending an appeal by the defendant.

On motion of Representative Ritter, the house concurred in the senate amendments to **HB 261** by (Record 348): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Burnam; Callegari; Capelo; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander; Brown, F.; Hilbert.

Absent — Carter; Garcia; Ramsay; Yarbrough.

Senate Amendment No. 1 (Senate Floor Amendment No. 1-2nd reading)

Amend **HB 261**, (Committee Printing), as follows:

On page 1, line 23, insert the following after "appeal.": If a defendant has filed a motion for new trial, he may not be transferred to the institutional division until the expiration of 75 days after the date of sentencing.

Senate Amendment No. 2 (Senate Floor Amendment No. 1-3rd reading)

Amend **HB 261** by striking the Second Reading Floor Amendment by Bernsen.

HB 444 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Madden called up with senate amendments for consideration at this time,

HB 444, A bill to be entitled An Act relating to the requirements for write-in candidates in a special election for city officers.

On motion of Representative Madden, the house concurred in the senate amendments to **HB 444**.

Senate Committee Substitute

CSHB 444, A bill to be entitled An Act, relating to the requirements for write-in candidates in an election for city officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:SECTION 1. Sections 146.051 and 146.055, Election Code, are amended to read as follows:

Sec. 146.051. CANDIDATE'S NAME REQUIRED TO APPEAR ON LIST. In an ~~a general~~ election for city officers, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

Sec. 146.055. APPLICABILITY OF OTHER CODE PROVISIONS. Subchapter B applies to write-in voting in an ~~a general~~ election for city officers except to the extent of a conflict with this subchapter.

SECTION 2. This Act takes effect September 1, 2001.

HB 822 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Giddings called up with senate amendments for consideration at this time,

HB 822, A bill to be entitled An Act relating to the period during which a justice, municipal, or juvenile court may defer proceedings against certain persons for purposes of attending a teen court program.

On motion of Representative Giddings, the house concurred in the senate amendments to **HB 822**. (Craddick recorded voting no)

Senate Committee Substitute

CSHB 822, A bill to be entitled An Act, relating to the deferral of proceedings in a justice, municipal, or juvenile court against certain persons for purposes of attending a teen court program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Articles 45.052(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) A justice or municipal court may defer proceedings against a defendant who is under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma for not more than 180 [90] days if the defendant:

(1) is charged with an offense that the court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure;

(2) pleads nolo contendere or guilty to the offense in open court with the defendant's parent, guardian, or managing conservator present;

(3) presents to the court an oral or written request to attend a teen court program; and

(4) has not successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

(c) A defendant for whom proceedings are deferred under Subsection (a) shall complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period, whichever date is earlier. The justice or municipal court shall dismiss the charge at the time [~~conclusion of the deferral period if~~] the defendant presents satisfactory evidence that the defendant has successfully completed the teen court program.

SECTION 2. Sections 54.032(a) and (c), Family Code, are amended to read as follows:

(a) A juvenile court may defer adjudication proceedings under Section 54.03 [~~of this code~~] for not more than 180 [90] days if the child:

(1) is alleged to have engaged in conduct indicating a need for supervision that violated a penal law of this state of the grade of misdemeanor that is punishable by fine only or a penal ordinance of a political subdivision of this state;

(2) waives, under Section 51.09 [~~of this code~~], the privilege against self-incrimination and testifies under oath that the allegations are true;

(3) presents to the court an oral or written request to attend a teen court program; and

(4) has not successfully completed a teen court program for the violation of the same penal law or ordinance in the two years preceding the date that the alleged conduct occurred.

(c) A child for whom adjudication proceedings are deferred under Subsection (a) shall complete the teen court program not later than the 90th day after the date the teen court hearing to determine punishment is held or the last day of the deferral period, whichever date is earlier. The court shall dismiss the case with prejudice at the time [~~conclusion of the deferral period if~~] the child presents satisfactory evidence that the child has successfully completed the teen court program.

SECTION 3. (a) This Act takes effect September 1, 2001, and applies only to a defendant charged with an offense committed or, for the purposes of Title 3, Family Code, a child alleged to have engaged in conduct that occurs on or after the effective date of this Act. An offense committed or conduct that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose.

(b) For purposes of this section, an offense was committed before the effective date of this Act if every element of the offense occurred before that date, and conduct violating a penal law of this state occurred before the effective date of this Act if every element of the violation occurred before that date.

HB 1132 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Thompson called up with senate amendments for consideration at this time,

HB 1132, A bill to be entitled An Act relating to guardianships and other related matters concerning incapacitated persons.

On motion of Representative Thompson, the house concurred in the senate amendments to **HB 1132**.

Senate Committee Substitute

CSHB 1132, a bill to be entitled An Act, relating to guardianships and other related matters concerning incapacitated persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 485, Texas Probate Code, is amended to read as follows:

Sec. 485. RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the attorney in fact or agent terminate on the qualification of the guardian of the estate, and the attorney in fact or agent shall deliver to the guardian of the estate all assets of the estate of the ward in the attorney's or agent's possession and shall account to the guardian of the estate as the attorney or agent would to the principal had the principal terminated his powers.

(b) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the attorney in fact or agent on the qualification of the temporary guardian of the estate until the date on which the term of the temporary guardian expires.

(c) Subsection (b) of this section may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.

SECTION 2. Section 601, Texas Probate Code, is amended to read as follows:

Sec. 601. DEFINITIONS. In this chapter:

(1) "Attorney ad litem" means an attorney who is appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, or an unborn person in a guardianship proceeding.

(2) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in this state to issue surety, guaranty, or indemnity bonds guaranteeing the fidelity of guardians.

(3) "Child" includes a biological or adopted child, whether adopted by a parent under a statutory procedure or by acts of estoppel.

(4) "Claims" includes a liability against the estate of a minor or an incapacitated person and debts due to the estate of a minor or an incapacitated person.

(5) "Community administrator" means a spouse who is authorized to manage, control, and dispose of the entire community estate on the judicial declaration of incapacity of the other spouse, including the part of the community estate that the other spouse legally has the power to manage in the absence of the incapacity.

(6) "Corporate fiduciary" means a financial institution as defined by Section 201.101, Finance Code, having trust powers, existing or doing business under the laws of this state, another state, or the United States, that is authorized by law to act under the order or appointment of any court of record, without giving bond, as a guardian, receiver, trustee, executor, or administrator, or, although without general depository powers, as a depository for any money paid into court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.

(7) [(6)] "Court investigator" means a person appointed by a statutory probate court under Section 25.0025, Government Code.

(8) [(7)] "Court" or "probate court" means a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

(9) [(8)] "Estate" or "guardianship estate" means the real and personal property of a ward or deceased ward, both as the property originally existed and as has from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions to (including any property to be distributed to the representative of the deceased ward by the trustee of a trust that terminates on the ward's death) or substitutions for the property, and as diminished by any decreases to or distributions from the property.

(10) [(9)] "Exempt property" refers to that property of a deceased ward's estate that is exempt from execution or forced sale by the constitution or laws of this state, and to the allowance in lieu of the property.

(11) [(10)] "Guardian" means a person who is appointed guardian under Section 693 of this code, or a temporary or successor guardian. Except as expressly provided otherwise, "guardian" includes the guardian of the estate and the guardian of the person of an incapacitated person.

(12) [(11)] "Guardian ad litem" means a person who is appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.

(13) [(12)] "Guardianship program" means a local, county, or regional program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs.

(14) [(13)] "Incapacitated person" means:

(A) a minor;

(B) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs; or

(C) a person who must have a guardian appointed to receive funds due the person from any governmental source.

(15) [(14)] "Interested persons" or "persons interested" means an heir, devisee, spouse, creditor, or any other person having a property right in, or claim against, the estate being administered or a person interested in the welfare of an incapacitated person, including a minor.

(16) [(15)] "Minor" means a person who is younger than 18 years of age and who has never been married or who has not had the person's disabilities of minority removed for general purposes.

(17) [(16)] "Minutes" means the guardianship minutes.

(18) [(17)] "Mortgage" or "lien" includes a deed of trust; vendor's lien; chattel mortgage; mechanic's, materialman's, or laborer's lien; judgment, attachment, or garnishment lien; pledge by hypothecation; and a federal or state tax lien.

(19) [(18)] "Next of kin" includes an adopted child, the descendants of an adopted child, and the adoptive parent of an adopted child.

(20) [(19)] "Parent" means the mother of a child, a man presumed to be the biological father of a child, a man who has been adjudicated to be the biological father of a child by a court of competent jurisdiction, or an adoptive mother or father of a child, but does not include a parent as to whom the parent-child relationship has been terminated.

(21) [(20)] "Person" includes natural persons, corporations, and guardianship programs.

(22) [(21)] "Personal property" includes an interest in goods, money, choses in action, evidence of debts, and chattels real.

(23) [(22)] "Personal representative" or "representative" includes a guardian, and a successor guardian.

(24) [(23)] "Private professional guardian" means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.

(25) [(24)] "Proceedings in guardianship," "guardianship matter," "guardianship matters," "guardianship proceeding," and "proceedings for guardianship" are synonymous and include a matter or proceeding relating to a guardianship or any other matter addressed by this chapter.

(26) [(25)] "Property" includes both real and personal property.

(27) [(26)] "Proposed ward" means a person alleged to be incapacitated in a guardianship proceeding.

(28) [(27)] "Real property" includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(29) [(28)] "Statutory probate court" means a statutory court designated as a statutory probate court under Chapter 25, Government Code. A county court at law exercising probate jurisdiction is not a statutory probate court under this chapter unless the court is designated a statutory probate court under Chapter 25, Government Code.

(30) [(29)] "Surety" includes a personal and a corporate surety.

(31) [(30)] "Ward" is a person for whom a guardian has been appointed.

(32) [(31)] The singular number includes the plural; the plural number includes the singular.

(33) [(32)] The masculine gender includes the feminine and neuter.

SECTION 3. Section 665(a), Texas Probate Code, is amended to read as follows:

(a) The court may authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court shall set the

compensation in an amount not exceeding five percent of the ward's gross income. In determining whether to authorize compensation for a guardian under this section, the court shall consider the ward's monthly income from all sources and whether the ward receives medical assistance under the state Medicaid program.

SECTION 4. Section 676, Texas Probate Code, is amended by amending Subsection (d) and adding Subsections (e)-(g) to read as follows:

(d) Notwithstanding Subsection (b) of this section and Section 690 of this code, the [The] surviving parent of a minor may by will or written declaration appoint any eligible person to be guardian of the person of the parent's minor children after the death of the parent or in the event of the parent's incapacity.

(e) After the death of the surviving parent of a minor or if the court finds the surviving parent is an incapacitated person, as appropriate [Unless the court finds that the person designated in the will or declaration to serve as guardian of the person of the parent's minor children is disqualified, is dead, refuses to serve, or would not serve the best interests of the minor children], the court shall appoint the person designated in the will or declaration to serve as guardian of the person of the parent's minor children in preference to those otherwise entitled to serve as guardian under this chapter unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the minor children.

(f) On compliance with this chapter [code], an eligible person is also entitled to be appointed guardian of the children's estates after the death of the parent or in the event of the parent's incapacity.

(g) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of a minor child solely because of the incapacity of the minor's surviving parent and in accordance with this section and Section 677A of this code terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person.

SECTION 5. Section 677, Texas Probate Code, is amended by amending Subsection (b) and adding Subsections (c)-(e) to read as follows:

(b) The surviving parent of an adult individual who is an incapacitated person[, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs,] may by will or written declaration appoint an eligible person to be guardian of the person of the adult individual after the parent's death or in the event of the parent's incapacity if the parent is the guardian of the person of the adult individual.

(c) After the death of the surviving parent of an adult individual who is an incapacitated person or if the court finds the surviving parent becomes an incapacitated person after being appointed the individual's guardian, as appropriate [Unless the court finds that the person designated in the will or declaration to serve as guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the adult individual], the court shall appoint the person designated in the will or declaration to serve as guardian in preference to those otherwise entitled to serve as guardian under this chapter unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the adult individual.

(d) On compliance with this chapter ~~[code]~~, the eligible person appointed under Subsection (c) of this section ~~[this subsection]~~ is also entitled to be appointed guardian of the adult individual's estate after the death of the individual's parent or in the event of the parent's incapacity if the individual's parent is the guardian of the individual's estate.

(e) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of an adult individual solely because of the incapacity of the individual's surviving parent and in accordance with this section and Section 677A of this code terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person and reappointing the surviving parent as the individual's guardian.

SECTION 6. Section 677A, Texas Probate Code, is amended to read as follows:

Sec. 677A. WRITTEN DECLARATIONS BY CERTAIN PARENTS TO APPOINT GUARDIANS FOR THEIR CHILDREN. (a) A written declaration appointing an eligible person to be guardian of the person of the parent's child under Section 676(d) or 677(b) of this code must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or

(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declaration that is not written wholly in the handwriting of the declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) of this section may [The declaration must] have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration. [A properly executed and witnessed declaration and affidavit are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.]

(d) ~~[(c)]~~ The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

(e) If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(f) ~~[(d)]~~ The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

(g) ~~[(e)]~~ A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant's child. The following form may, but need not, be used:

**DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN
IN THE EVENT OF MY DEATH OR INCAPACITY**

I, _____, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

(add blanks as appropriate)

I designate _____ to serve as guardian of the person of my (child or children), _____ as first alternate guardian of the person of my (child or children), _____ as second alternate guardian of the person of my (child or children), and _____ as third alternate guardian of the person of my (child or children).

I direct that the guardian of the person of my (child or children) serve (with or without) bond.

(If applicable) I designate _____ to serve as guardian of the estate of my (child or children), _____ as first alternate guardian of the estate of my (child or children), _____ as second alternate guardian of the estate of my (child or children), and _____ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

Signed this _____ day of _____, 20 [+9—].

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on this ____ day of _____, 20 [+9—].

Notary Public in and for the
State of Texas
My Commission expires:

(h) In this section, "self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Subsection (g) of this section.

SECTION 7. Subpart A, Part 3, Chapter XIII, Texas Probate Code, is amended by adding Section 677B to read as follows:

Sec. 677B. PROOF OF WRITTEN DECLARATION OF CERTAIN PARENTS TO DESIGNATE CHILDRENS' GUARDIAN. (a) In this section:

(1) "Declaration" means a written declaration of a person that:

(A) appoints a guardian for the person's child under Section 676(d) or 677(b) of this code; and

(B) satisfies the requirements of Section 677A of this code.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Section 677A(g) of this code.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

(b) If a declaration is self-proved, the court may admit the declaration into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(c) At any time during the declarant's lifetime, a written declaration described by Section 677A(a)(1) of this code may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Section 60 of this code.

(d) A properly executed and witnessed self-proving declaration and affidavit, including a declaration and affidavit described by Section 677A(c) of this code, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

(e) A written declaration described by Section 677A(a)(1) of this code that is not self-proved may be proved in the same manner a will written wholly in the handwriting of the testator is proved under Section 84 of this code.

(f) A written declaration described by Section 677A(a)(2) of this code that is not self-proved may be proved in the same manner an attested written will produced in court is proved under Section 84 of this code.

SECTION 8. Section 679, Texas Probate Code, is amended to read as follows:

Sec. 679. DESIGNATION OF GUARDIAN BEFORE NEED ARISES. (a) A person other than an incapacitated person may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant if the declarant becomes incapacitated. The declaration must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or

(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declarant may, in the declaration, disqualify named persons from

serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.

(c) A declaration that is not written wholly in the handwriting of a declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(d) A declaration described by Subsection (a)(2) of this section may ~~[The declaration must]~~ have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration. ~~[A properly executed and witnessed declaration and affidavit are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.]~~

(e) ~~[(d)]~~ The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

(f) Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(g) ~~[(e)]~~ The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

(h) ~~[(f)]~~ If a declarant designates the declarant's spouse to serve as guardian under this section, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

(i) ~~[(g)]~~ A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following form ~~[forms]~~ may, but need not, be used:

DECLARATION OF GUARDIAN IN THE EVENT OF LATER
INCAPACITY OR NEED OF GUARDIAN

I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

1. I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.

2. I designate _____ to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: _____, _____, and _____.

5. I expressly disqualify the following persons from serving as guardian of my estate: _____, _____, and _____.

Signed this ____ day of _____, 20__ [~~19~~].

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by the above named declarant and affiants on this ____ day of _____, 20__ [~~19~~].

Notary Public in and for
the State of Texas
My Commission expires:

(j) In this section, "self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Subsection (i) of this section.

SECTION 9. Subpart A, Part 3, Chapter XIII, Texas Probate Code, is amended by adding Section 679A to read as follows:

Sec. 679A. PROOF OF WRITTEN DECLARATION TO DESIGNATE GUARDIAN BEFORE NEED ARISES. (a) In this section:

(1) "Declaration" means a written declaration of a person that:

(A) designates another person to serve as a guardian of the person or estate of the declarant; and

(B) satisfies the requirements of Section 679 of this code.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Section 679(i) of this code.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

(b) If a declaration is self-proved, the court may admit the declaration into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(c) At any time during the declarant's lifetime, a written declaration described by Section 679(a)(1) of this code may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Section 60 of this code.

(d) A properly executed and witnessed self-proving declaration and affidavit, including a declaration and affidavit described by Section 679(d) of this code, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

(e) A written declaration described by Section 679(a)(1) of this code that is not self-proved may be proved in the same manner a will written wholly in the handwriting of the testator is proved under Section 84 of this code.

(f) A written declaration described by Section 679(a)(2) of this code that is not self-proved may be proved in the same manner an attested written will produced in court is proved under Section 84 of this code.

SECTION 10. Section 682A(a), Texas Probate Code, is amended to read as follows:

(a) If a minor is a person who, because of incapacity, will require a guardianship after the ward is no longer a minor, a person may file an application under Section 682 of this code for the appointment of a guardian of the person or ~~and/or~~ the estate, or both, of the proposed ward not earlier than the 180th ~~60th~~ day before the proposed ward's 18th birthday. If the application is heard before the proposed ward's 18th birthday, a guardianship created under this section may not take effect and the person appointed guardian may not give a bond or take the oath as required under Section 700 or 702 of this code until the proposed ward's 18th birthday.

SECTION 11. Section 701, Texas Probate Code, is amended to read as follows:

Sec. 701. TIME FOR TAKING OATH AND GIVING BOND. Except as provided by Section 682A(a) of this code, the [The] oath of a guardian may be taken and subscribed, or the bond of a guardian may be given and approved, at any time before the expiration of the 20th day after the date of the order granting letters of guardianship, or before the letters have been revoked for a failure to qualify within the time allowed. An oath may be taken before any person authorized to administer oaths under the laws of this state.

SECTION 12. Section 702(b), Texas Probate Code, is amended to read as follows:

(b) A bond is not required to be given by a guardian that is:

(1) a corporate fiduciary, as defined by Section 601 ~~601(5)~~ of this code; or

(2) a guardianship program operated by a county.

SECTION 13. Section 745(c), Texas Probate Code, is amended to read as follows:

(c) When the estate of a minor ward consists only of cash or cash equivalents in an amount of \$50,000 ~~[\$25,000]~~ or less, the guardianship of the estate may be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, and the clerk shall manage the funds as provided by Section 887 of this code.

SECTION 14. Subpart D, Part 4, Chapter XIII, Texas Probate Code, is amended by adding Sections 760A and 760B to read as follows:

Sec. 760A. CHANGE OF RESIDENT AGENT. (a) A guardian may change its resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing a statement of the change entitled "Designation of Successor Resident Agent" with the court in which the guardianship proceeding is pending. The statement must contain the names and addresses of the:

- (1) guardian;
- (2) resident agent; and
- (3) successor resident agent.

(b) The designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Sec. 760B. RESIGNATION OF RESIDENT AGENT. (a) A resident agent of a guardian may resign as the resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement entitled "Resignation of Resident Agent" that:

- (1) contains the name of the guardian;
- (2) contains the address of the guardian most recently known by the resident agent;
- (3) states that notice of the resignation has been given to the guardian and that the guardian does not have a resident agent; and
- (4) contains the date on which the notice of the resignation was given to the guardian.

(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) of this section to:

- (1) the guardian at the address most recently known by the agent; and
- (2) each party in the case or the party's attorney or other designated representative of record.

(c) The resignation of a resident agent takes effect on the date on which the court enters an order accepting the agent's resignation. A court may not enter an order accepting the agent's resignation unless the agent complies with the requirements of this section.

SECTION 15. Section 761, Texas Probate Code, is amended to read as follows:

Sec. 761. REMOVAL. (a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian, appointed under this chapter, who:

- (1) neglects to qualify in the manner and time required by law;
- (2) fails to return within 90 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;
- (3) having been required to give a new bond, fails to do so within the time prescribed;
- (4) absents himself from the state for a period of three months at one time without permission of the court, or removes from the state;

(5) cannot be served with notices or other processes because of the fact that:

(A) the guardian's whereabouts are unknown;

(B) ~~[-or because]~~ the guardian is eluding service; or

(C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;

(6) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care; or

(7) has cruelly treated a ward, or has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.

(b) The court may remove a personal representative under Subsection (a)(6) or (7) of this section only on the presentation of clear and convincing evidence given under oath.

(c) The court may remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when:

(1) sufficient grounds appear to support belief that the guardian has misapplied, embezzled, or removed from the state, or that the guardian is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the care of the guardian;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey any proper order of the court having jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the duties of the guardian;

(5) the guardian becomes incapacitated, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the guardian's trust;

(6) as guardian of the person, the guardian cruelly treats the ward, or neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(7) the guardian interferes with the ward's progress or participation in programs in the community; ~~[or]~~

(8) the guardian fails to comply with the requirements of Section 697 of this code; or

(9) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward.

(d) The order of removal shall state the cause of the removal. It must require that any letters issued to the person who is removed shall, if the removed person has been personally served with citation, be surrendered and that all those letters be canceled of record, whether or not delivered. It must further require, as to all the estate remaining in the hands of a removed person, delivery of the estate to the person or persons entitled to the estate, or to one

who has been appointed and has qualified as successor guardian, and as to the person of a ward, that control be relinquished as required in the order.

(e) If a joint guardian is removed under Subsection (c)(9) of this section, the other joint guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians' marriage.

(f) If the necessity exists, the court may immediately appoint a successor but may not discharge the person removed as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian.

(g) [(f)] The court at any time may order a person removed as guardian under this section who has all or part of the estate of a ward to deliver all or part of the ward's estate to a person who has been appointed and has qualified as successor guardian.

SECTION 16. Subpart M, Part 4, Chapter XIII, Texas Probate Code, is amended by adding Section 865A to read as follows:

Sec. 865A. INSPECTION OF CERTAIN INSTRUMENT FOR ESTATE PLANNING PURPOSES. (a) On the filing of an application under Section 865 of this code, the guardian of the ward's estate may apply to the court for an order to seek an in camera inspection of a true copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument for purposes of establishing an estate plan under Section 865 of this code.

(b) An application filed under this section must:

(1) be sworn to by the guardian;

(2) list all of the instruments requested for inspection; and

(3) state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a) of this section.

(c) A person who files an application under this section shall send a copy of the application to:

(1) each person who has custody of an instrument listed in the application;

(2) the ward's spouse;

(3) the ward's dependents;

(4) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate; and

(5) any other person as directed by the court.

(d) Notice required by Subsection (c) of this section must be delivered by certified mail to a person described by Subsection (c)(2), (3), (4), or (5) of this section and by registered or certified mail to a person described by Subsection (c)(1) of this section. After the 10th day after the date on which the applicant complies with the notice requirement, the applicant may request that a hearing be held on the application. Notice of the date, time, and place of the hearing must be given by the applicant to each person described by Subsection (c)(1) of this section when the court sets a date for a hearing on the application.

(e) After the conclusion of a hearing on the application and on a finding that there is good cause for an in camera inspection of a requested instrument, the court shall direct the person that has custody of the requested will, codicil, trust, or other estate planning instrument to deliver a true copy of the instrument

to the court for in camera inspection only. After conducting an in camera review of the instrument, the court, if good cause exists, shall release all or part of the instrument to the applicant only for the purpose described by Subsection (a) of this section.

(f) The court may appoint a guardian ad litem for the ward or an interested party at any stage of the proceedings if it is considered advisable for the protection of the ward or the interested party.

(g) An attorney does not violate the attorney-client privilege solely by complying with a court order to release an instrument subject to this section. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subsection.

SECTION 17. Section 875(c), Texas Probate Code, is amended to read as follows:

(c) A sworn, written application for the appointment of a temporary guardian may be filed before the court appoints a temporary guardian. The application must be filed not later than the end of the next business day of the court after the date of appointment of the temporary guardian. The application must state:

(1) the name and address of the person who is the subject of the guardianship proceeding;

(2) the danger to the person or property alleged to be imminent;

(3) the type of appointment and the particular protection and assistance being requested;

(4) the facts and reasons supporting the allegations and requests;

(5) the name, address, and qualification of the proposed temporary guardian;

(6) the name, address, and interest of the applicant; and

(7) ~~[the social security numbers of the applicant and proposed ward;~~
and

~~[(8)]~~ if applicable, that the proposed temporary guardian is a private professional guardian who has complied with the requirements of Section 697 of this code.

SECTION 18. Section 883, Texas Probate Code, is amended to read as follows:

Sec. 883. INCAPACITATED SPOUSE. (a) Except as provided by Subsection (c) of this section, when [When] a husband or wife is judicially declared to be incapacitated;

(1) [;] the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate as community administrator, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, without an administration; and

(2) if the incapacitated spouse owns separate property, the court shall appoint the other spouse or another person or entity, in the order of precedence established under Section 677 of this code, as guardian of the estate to administer only the separate property of the incapacitated spouse.

(b) The spouse who is not incapacitated is presumed to be suitable and qualified to serve as community administrator. [If the court finds that it is in the best interest of the incapacitated spouse and that the other spouse would

~~not be disqualified to serve as guardian under Section 681 of this code; guardianship of the estate of the incapacitated spouse may not be necessary when the other spouse is not incapacitated unless the incapacitated spouse owns separate property, and the guardianship will be of the separate property only.] The qualification of a guardian of the estate of the separate property of an incapacitated spouse as required under Subsection (a) of this section does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this chapter.~~

(c) If a spouse who is not incapacitated is removed as community administrator or if the court finds that the spouse who is not incapacitated would be disqualified to serve as guardian under Section 681 of this code or is not suitable to serve as community administrator for any other reason, the court:

(1) shall appoint a guardian of the estate for the incapacitated spouse if the court:

(A) has not appointed a guardian of the estate under Subsection (a)(2) of this section; or

(B) has appointed the spouse who is not incapacitated as guardian of the estate under Subsection (a)(2) of this section;

(2) after taking into consideration the financial circumstances of the spouses and any other relevant factors, may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse a portion, not to exceed one-half, of the community property that is subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) shall authorize the guardian of the estate of the incapacitated spouse to administer:

(A) any separate property of the incapacitated spouse;

(B) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(C) any community property delivered to the guardian of the estate under Subdivision (2) of this subsection; and

(D) any income earned on property described in this subsection.

(d) On a person's removal as community administrator or on qualification of a guardian of the estate of the person's incapacitated spouse under Subsection (c) of this section, as appropriate, a spouse who is not incapacitated shall continue to administer:

(1) the person's own separate property;

(2) any community property that is subject to the person's sole management, control, and disposition under Section 3.102, Family Code;

(3) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code, unless the person is required to deliver a portion of that community property to the guardian of the estate of the person's incapacitated spouse under Subsection (c)(2) of this section, in which event, the person shall continue to administer only the portion of the community property remaining after delivery; and

(4) any income earned on property described in this subsection the person is authorized to administer.

(e) The duties and obligations between spouses, including the duty to support the other spouse, and the rights of any creditor of either spouse are not affected by the manner in which community property is administered under this section.

SECTION 19. Section 883A, Texas Probate Code, is amended to read as follows:

Sec. 883A. RECOVERY OF CAPACITY. The special powers of management, control, and disposition vested in the community administrator [~~same spouse~~] by this chapter [~~code~~] shall terminate when the decree of a court of competent jurisdiction finds that the mental capacity of the incapacitated [~~other~~] spouse has been recovered.

SECTION 20. Subpart C, Part 5, Chapter XIII, Texas Probate Code, is amended by adding Sections 883B, 883C, and 883D to read as follows:

Sec. 883B. ACCOUNTING, INVENTORY, AND APPRAISEMENT BY COMMUNITY ADMINISTRATOR. (a) On its own motion or on the motion of an interested person for good cause shown, the court may order a community administrator to file a verified, full, and detailed inventory and appraisal of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described in this subsection.

(b) At any time after the expiration of 15 months after the date that a community administrator's spouse is judicially declared to be incapacitated, the court, on its own motion or on the motion of an interested person for good cause shown, may order the community administrator to prepare and file an accounting of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described in this subsection.

(c) An inventory and appraisal ordered under Subsection (a) of this section must:

(1) be prepared in the same form and manner that is required of a guardian under Section 729 of this code; and

(2) be filed not later than the 90th day after the date on which the order is issued.

(d) An accounting ordered under Subsection (b) of this section must:

(1) be prepared in the same form and manner that is required of a guardian under Section 741 of this code, except that the requirement that an accounting be filed annually with the county clerk does not apply; and

(2) be filed not later than the 60th day after the date on which the order is issued.

(e) After an initial accounting has been filed by a community administrator under this section, the court, on the motion of an interested person for good cause shown, may order the community administrator to file subsequent periodic accountings at intervals of not less than 12 months.

Sec. 883C. REMOVAL OF COMMUNITY ADMINISTRATOR. (a) A court, on its own motion or on the motion of an interested person and after the community administrator has been cited by personal service to answer at a time and place specified in the notice, may remove a community administrator if:

(1) the community administrator fails to comply with a court order for an inventory and appraisalment, accounting, or subsequent accounting under Section 883B of this code;

(2) sufficient grounds appear to support belief that the community administrator has misapplied or embezzled, or that the community administrator is about to misapply or embezzle, all or any part of the property committed to the care of the community administrator;

(3) the community administrator is proved to have been guilty of gross misconduct or gross mismanagement in the performance of duties as community administrator; or

(4) the community administrator becomes an incapacitated person, is sentenced to the penitentiary, or for any other reason becomes legally incapacitated from properly performing the community administrator's fiduciary duties.

(b) The order of removal must state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse's part of the community estate the community administrator's necessary expenses and disbursements in the removal proceedings, including reasonable attorney's fees.

Sec. 883D. APPOINTMENT OF ATTORNEY AD LITEM FOR INCAPACITATED SPOUSE. (a) The court shall appoint an attorney ad litem to represent the interests of an incapacitated spouse in a proceeding to remove a community administrator or other proceeding brought under this subpart.

(b) The attorney ad litem may demand from the community administrator an accounting or inventory and appraisalment of the incapacitated spouse's part of the community estate being managed by the community administrator.

(c) A community administrator shall comply with a demand made under this section not later than the 60th day after the date on which the community administrator receives the demand.

(d) An accounting or inventory and appraisalment returned under this section must be prepared in the form and manner required by the attorney ad litem, and the attorney ad litem may require the community administrator to file the accounting and inventory and appraisalment with the court.

SECTION 21. Section 884, Texas Probate Code, is amended to read as follows:

Sec. 884. DELIVERY TO SPOUSE. A guardian of the estate of an incapacitated married person who, as guardian, is administering community

property as part of the estate of the ward, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section 883 of this code.

SECTION 22. Subpart C, Part 5, Chapter XIII, Texas Probate Code, is amended by adding Section 884A to read as follows:

Sec. 884A. LAWSUIT INFORMATION. A person whose spouse is judicially declared to be incapacitated and who acquires the power to manage, control, and dispose of the entire community estate under Section 883 of this code shall inform the court in writing of any suit filed by or on behalf of the person that:

(1) is a suit for dissolution of the marriage of the person and the person's incapacitated spouse; or

(2) names the incapacitated spouse as a defendant.

SECTION 23. Section 3.301, Family Code, is amended to read as follows:

Sec. 3.301. [~~INCAPACITATED;~~] MISSING, ABANDONED, OR SEPARATED SPOUSE. (a) A spouse may file a sworn petition stating the facts that make it desirable for the petitioning spouse to manage, control, and dispose of community property described or defined in the petition that would otherwise be subject to the sole or joint management, control, and disposition of the other spouse if:

(1) [~~because of physical or mental incapacity, the other spouse is unable to manage, control, or dispose of the community property subject to that spouse's sole or joint management, control, and disposition;~~

[~~(2)~~] the other spouse has disappeared and that spouse's location remains unknown to the petitioning spouse, unless the spouse is reported to be a prisoner of war or missing on public service;

(2) [~~(3)~~] the other spouse has permanently abandoned the petitioning spouse; or

(3) [~~(4)~~] the spouses are permanently separated.

(b) The petition may be filed in a court in the county in which the petitioner resided at the time the [~~incapacity or~~] separation began, or the abandonment or disappearance occurred, not earlier than the 60th day after the date of the occurrence of the event. If both spouses are nonresidents of this state at the time the petition is filed, the petition may be filed in a court in a county in which any part of the described or defined community property is located.

SECTION 24. Section 3.307(b), Family Code, is amended to read as follows:

(b) On the motion of either spouse, the court shall amend or vacate the original order after notice and hearing if:

(1) [~~the incapacitated spouse's capacity is restored;~~

[~~(2)~~] the spouse who disappeared reappears;

(2) [~~(3)~~] the abandonment or permanent separation ends; or

(3) [~~(4)~~] the spouse who was reported to be a prisoner of war or missing on public service returns.

SECTION 25. Section 5.002, Family Code, is amended to read as follows:

Sec. 5.002. SALE OF SEPARATE HOMESTEAD AFTER [FOR INCAPACITATED] SPOUSE JUDICIALLY DECLARED INCAPACITATED. If the homestead is the separate property of a spouse and the other spouse has

been judicially declared incapacitated by a court exercising original jurisdiction over guardianship and other matters under Chapter XIII, Texas Probate Code, the owner may sell, convey, or encumber the homestead without the joinder of the other spouse.

SECTION 26. Section 5.101, Family Code, is amended to read as follows:

Sec. 5.101. SALE OF SEPARATE HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. If the homestead is the separate property of a spouse, that spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) ~~[is incapacitated, whether judicially declared incapacitated or not; (2)]~~ has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) ~~(3)~~ has permanently abandoned the homestead and the petitioning spouse;

(3) ~~(4)~~ has permanently abandoned the homestead and the spouses are permanently separated; or

(4) ~~(5)~~ has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

SECTION 27. Section 5.102, Family Code, is amended to read as follows:

Sec. 5.102. SALE OF COMMUNITY HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. If the homestead is the community property of the spouses, one spouse may file a sworn petition that gives a description of the property, states the facts that make it desirable for the petitioning spouse to sell, convey, or encumber the homestead without the joinder of the other spouse, and alleges that the other spouse:

(1) ~~[is incapacitated, whether judicially declared incapacitated or not; (2)]~~ has disappeared and that the location of the spouse remains unknown to the petitioning spouse;

(2) ~~(3)~~ has permanently abandoned the homestead and the petitioning spouse;

(3) ~~(4)~~ has permanently abandoned the homestead and the spouses are permanently separated; or

(4) ~~(5)~~ has been reported by an executive department of the United States to be a prisoner of war or missing on public service of the United States.

SECTION 28. Section 5.103, Family Code, is amended to read as follows:

Sec. 5.103. TIME FOR FILING PETITION. The petitioning spouse may file the petition in a court of the county in which any portion of the property is located not earlier than the 60th day after the date of the occurrence of an event described by Sections 5.101(1)-(3) ~~[5.101(1)-(4)]~~ and 5.102(1)-(3) ~~[5.102(1)-(4)]~~ or not less than six months after the date the other spouse had been reported to be a prisoner of war or missing on public service.

SECTION 29. Section 5.107, Family Code, is redesignated as Section 5.003, Family Code, and amended to read as follows:

Sec. 5.003 ~~[5.107]~~. SALE OF COMMUNITY HOMESTEAD AFTER ~~[FOR]~~ SPOUSE JUDICIALLY DECLARED INCAPACITATED. If the homestead is the community property of the spouses and one spouse has been judicially declared incapacitated by a court exercising original jurisdiction over

guardianship and other matters under Chapter XIII, Texas Probate Code, the competent spouse may sell, convey, or encumber the homestead without the joinder of the other spouse.

SECTION 30. The change in law made by this Act to Sections 3.301, 3.307(b), 5.101, 5.102, and 5.103, Family Code, applies only to a proceeding in which an original petition is filed on or after the effective date of this Act. A proceeding in which the original petition was filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

SECTION 31. The changes in law made by this Act to Section 485, Texas Probate Code, apply only to a durable power of attorney or statutory durable power of attorney executed by a principal for whom an application for the appointment of a permanent guardian or temporary guardian is filed on or after the effective date of this Act. A durable power of attorney or statutory durable power of attorney executed by a principal for whom an application for the appointment of a permanent guardian or temporary guardian is filed before the effective date of this Act is governed by the law in effect on the date the application for the appointment of a permanent or temporary guardian was filed, and the former law is continued in effect for that purpose.

SECTION 32. The changes in law made by this Act to Sections 676 and 677, Texas Probate Code, apply only to a will or written declaration for the appointment of a guardian that is executed on or after the effective date of this Act. A will or written declaration for the appointment of a guardian that is executed before the effective date of this Act is governed by the law in effect on the date the will or declaration was executed, and the former law is continued in effect for that purpose.

SECTION 33. The changes in law made by this Act to Sections 677A and 679, Texas Probate Code, and Sections 677B and 679A, Texas Probate Code, as added by this Act, apply only to a written declaration for the appointment of a guardian that is executed on or after the effective date of this Act. A written declaration for the appointment of a guardian that is executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose.

SECTION 34. The changes in law made by this Act to Sections 682A(a) and 701, Texas Probate Code, apply only to an application for the appointment of a guardian filed on or after the effective date of this Act. An application for the appointment of a guardian filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 35. Sections 760A and 760B, Texas Probate Code, as added by this Act, apply only to a change in designation of or a resignation of a resident agent made on or after the effective date of this Act. A change in designation of or the resignation of a resident agent made before the effective date of this Act is governed by the law in effect when the change in designation of or the resignation of the resident agent occurred, and the former law is continued in effect for that purpose.

SECTION 36. The changes in law made by this Act to Section 761, Texas Probate Code, apply only to a motion or complaint for the removal of a

guardian made or filed on or after the effective date of this Act. A motion or complaint for the removal of a guardian made or filed before the effective date of this Act is governed by the law in effect on the date the motion or complaint was made or filed, and the former law is continued in effect for that purpose.

SECTION 37. The changes in law made by Sections 2, 12, 18, 19, and 21 of this Act and Sections 883B, 883C, and 883D, Texas Probate Code, as added by this Act, apply only to the estate of a person for which a motion to judicially declare the person incapacitated is filed on or after the effective date of this Act. The estate of a person for which a motion to judicially declare the person incapacitated is filed before the effective date of this Act is governed by the law in effect when the motion was filed, and the former law is continued in effect for that purpose.

SECTION 38. The change in law made by this Act to Section 745(c), Texas Probate Code, applies only to an application to close a guardianship that is filed on or after the effective date of this Act. An application to close a guardianship that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 39. The change in law made by this Act to Section 875(c), Texas Probate Code, applies only to an application for the appointment of a temporary guardian that is filed on or after the effective date of this Act. An application for the appointment of a temporary guardian that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 40. This Act takes effect September 1, 2001.

HB 1178 - HOUSE CONCURS IN SENATE AMENDMENTS TEXT OF SENATE AMENDMENTS

Representative Wohlgemuth called up with senate amendments for consideration at this time,

HB 1178, A bill to be entitled An Act relating to the regulation of child-care facilities and agencies.

On motion of Representative Wohlgemuth, the house concurred in the senate amendments to **HB 1178**.

Senate Committee Substitute

CSHB 1178, A bill to be entitled An Act relating to the regulation of child-care facilities and agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 42.001, Human Resources Code, as amended by Chapters 664 and 1063, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program or by

requiring child-care facilities to be regulated by alternative accreditation bodies. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate. With respect to a school or child-care facility sponsored by a religious organization, nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the:

(1) form, manner, or content of religious instruction, ministry, teaching, or the curriculum offered by the school or facility;

(2) ability of the school or facility to select and supervise qualified personnel, and otherwise control the terms of employment, including the right to employ individuals who share the religious views of the school or facility;

(3) internal self-governance and autonomy of the school or facility; or

(4) religious environment of the school or facility, such as symbols, art, icons, and scripture.

SECTION 2. Section 42.002(3), Human Resources Code, as amended by Chapters 1022 and 1063, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

(3) "Child-care facility" means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

SECTION 3. Section 42.041(b), Human Resources Code, as amended by Chapters 1063 and 1217, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency foster home or agency foster group home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Texas Department of Health;

(6) a facility licensed, operated, certified, or registered by another state agency;

(7) an educational facility accredited by the Texas Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above, an after-school program operated directly by an accredited educational facility, or an after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and

Schools has approved the curriculum content of the after-school program operated under the contract;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a family home, whether registered or listed;

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers educational programs for children age five and above in one or more of the following: kindergarten through at least grade three, elementary, or secondary grades;

(12) an emergency shelter facility providing shelter to minor mothers who are the sole support of their natural children under Section 32.201, Family Code, unless the facility would otherwise require a license as a child-care facility under this section;

(13) a juvenile detention facility certified under Section 51.12, Family Code, or Section 141.042(d), a juvenile facility providing services solely for the Texas Youth Commission, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility; or

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless.

SECTION 4. Section 42.042(g), Human Resources Code, as amended by Chapters 1063 and 1217, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

(g) In promulgating minimum standards the department may recognize and treat differently the types of services provided by the following:

- (1) registered family homes;
- (2) child-care facilities, including child-care institutions, foster group homes, foster homes, group day-care homes, and day-care centers;
- (3) child-placing agencies;
- (4) agency foster homes; and
- (5) agency foster group homes.

SECTION 5. Section 42.044(c), Human Resources Code, as amended by Chapters 1022 and 1063, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

(c) The department must investigate a facility regulated under this chapter or a registered family home when a complaint is received. The representative of the department must notify the operator of a registered family home or the director or authorized representative of a regulated facility when a complaint is being investigated and report in writing the results of the investigation to the family home's operator or to the regulated facility's director or the director's authorized representative.

SECTION 6. Section 42.052(c), Human Resources Code, as amended by Chapters 1022, 1063, and 1217, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

(c) A family home that provides care for compensation for three or fewer children, excluding children who are related to the caretaker, shall list with the department if the home provides regular care in the caretaker's own residence. The home may register with the department.

SECTION 7. Section 42.052(f), Human Resources Code, as amended by Chapters 1022, 1063, and 1217, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

(f) To remain listed or registered with the department, a family home must comply with the department's rules and standards, if applicable, and any provision of this chapter that applies to a listed or registered family home.

SECTION 8. Section 42.052(j), Human Resources Code, as added by Chapter 1217, Acts of the 75th Legislature, Regular Session, 1997, is repealed.

SECTION 9. Section 42.057, Human Resources Code, as added by Chapter 1022, Acts of the 75th Legislature, Regular Session, 1997, is repealed.

SECTION 10. Section 42.057, Human Resources Code, as added by Chapter 1217, Acts of the 75th Legislature, Regular Session, 1997, is repealed.

SECTION 11. Section 42.072(d), Human Resources Code, as amended by Chapters 1022, 1063, and 1217, Acts of the 75th Legislature, Regular Session, 1997, is reenacted to read as follows:

(d) The department by rule may provide for denial of an application or renewal for a licensed facility or for listing or registering a family home or may revoke a facility's license or a family home's listing or registration based on findings of background or criminal history as a result of a background or criminal history check.

SECTION 12. Section 44.061, Human Resources Code, is repealed.

SECTION 13. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

(Hilbert now present)

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

**SB 1096 ON SECOND READING
(Brimer - House Sponsor)**

SB 1096, A bill to be entitled An Act relating to economic incentives to attract horse racing events of national significance.

SB 1096 was read second time on May 8 and was postponed until this time.

SB 1096 was passed to third reading. (Hopson, Nixon, and Uher recorded voting no)

**SB 980 ON SECOND READING
(Walker - House Sponsor)**

SB 980, A bill to be entitled An Act relating to the imposition by a municipality of a moratorium on property development in certain circumstances.

SB 980 was read second time on May 8 and was postponed until this time.

Amendment No. 1

Representative Walker offered the following amendment to **SB 980**:

Amend **SB 980** on page 1, between lines 14 and 15, by inserting the following:

(3) "Property development" means the new construction of residential buildings on vacant land.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representatives Chisum and Wilson offered the following amendment to **SB 980**:

Amend **SB 980** by adding a new Section 212.139 on page 6, between lines 7 and 8 to read as follows:

Section 212.139. PROPERTY SUBJECT TO PREVIOUS MORATORIUM. Property exempt from taxation pursuant to Section 11.20, Tax Code, which has been previously subjected to a moratorium on acceptance of applications for development permits shall be governed by the least restrictive zoning regulations applicable to such use within a municipality, regardless of its zoning.

Representative Naishtat raised a point of order against further consideration of Amendment No. 2 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

Representative Walker moved to postpone consideration of **SB 980** until 2 p.m. today.

The motion prevailed without objection.

SB 1175 ON SECOND READING
(Walker - House Sponsor)

SB 1175, A bill to be entitled An Act relating to the administration of the weather modification program and grants for weather modification and control activities.

SB 1175 was read second time on May 8 and was postponed until this time.

SB 1175 was passed to third reading.

GENERAL STATE CALENDAR
SENATE BILLS
THIRD READING

The following bill was laid before the house and read third time:

SB 846 ON THIRD READING
(Naishtat - House Sponsor)

SB 846, A bill to be entitled An Act relating to municipal payroll deductions.

A record vote was requested.

SB 846 was passed by (Record 349): 83 Yeas, 58 Nays, 1 Present, not voting.

Yeas — Averitt; Bailey; Bosse; Burnam; Capelo; Chavez; Chisum; Coleman; Cook; Counts; Danburg; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; Giddings; Glaze; Goolsby; Gray; Gutierrez; Haggerty; Hartnett; Hinojosa; Hochberg; Hodge; Homer; Hopson; Jones, D.; Jones, E.; Jones, J.; Junell; Keel; King, P.; King, T.; Kitchen; Lewis, G.; Lewis, R.; Longoria; Luna; Martinez Fischer; Maxey; McClendon; McReynolds; Menendez; Moreno, J.; Morrison; Naishtat; Najera; Noriega; Olivo; Pickett; Puente; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Salinas; Solis; Swinford; Telford; Thompson; Tillery; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; Wilson; Wise; Yarbrough; Zbrank.

Nays — Allen; Berman; Bonnen; Brimer; Brown, B.; Callegari; Carter; Christian; Clark; Corte; Crabb; Craddick; Crownover; Davis, J.; Delisi; Denny; Driver; Elkins; Geren; Goodman; Green; Grusendorf; Hamric; Hardcastle; Hawley; Heflin; Hilderbran; Hill; Hope; Howard; Hunter; Hupp; Isett; Janek; Keffer; Kolkhorst; Krusee; Kuempel; Madden; Marchant; McCall; Merritt; Miller; Mowery; Nixon; Pitts; Ramsay; Reyna, E.; Seaman; Shields; Smith; Smithee; Solomons; Talton; Truitt; West; Williams; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander; Brown, F.

Absent — George; Hilbert; Moreno, P.; Oliveira; Wohlgemuth; Wolens.

STATEMENTS OF VOTE

When Record No. 349 was taken, I was in the house but away from my desk. I would have voted no.

George

I was shown voting yes on Record No. 349. I intended to vote no.

Hartnett

I was shown voting yes on Record No. 349. I intended to vote no. I was at my desk trying to vote no but the light would not switch over.

E. Jones

HR 892 - ADOPTED
(by Kuempel and Krusee)

Representative Kuempel moved to suspend all necessary rules to take up and consider at this time **HR 892**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 892, Recognizing May 2001 as Tick-Borne Illness Awareness Month in the State of Texas.

HR 892 was read and was adopted without objection.

INTRODUCTION OF GUESTS

The speaker recognized Representative Kuempel, who introduced Connie Guthrie, David and Lisa Johnson, and members of the Texas Lyme Disease Coalition.

RULES SUSPENDED

Representative Danburg moved to suspend the 5-day posting rule to allow the Committee on Elections to consider **SB 1309** and **SB 1311** upon final adjournment today in a public hearing in E2.014.

The motion prevailed without objection.

Representative Smithee moved to suspend the 5-day posting rule to allow the Committee on Insurance to consider **SB 1467**.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Insurance, upon noon recess today, Desk 24, for a formal meeting, to consider **SB 1467**.

Economic Development, upon noon recess today, Desk 124, for a formal meeting.

Natural Resources, upon noon recess today, Desk 9, for a formal meeting, to consider **SB 1036**, **SB 1207**, **SB 1646**, **SB 1758**, **SB 1771**, **SB 1775**, **SB 1776**, **SB 1777**, **SB 1784**, and **SB 1796**.

Corrections, upon noon recess today, Desk 2, for a formal meeting, to consider **SB 840**.

(F. Brown now present)

RECESS

Representative Goolsby moved that the house recess until 1:45 p.m. today.

The motion prevailed without objection.

The house accordingly, at 12:14 p.m., recessed until 1:45 p.m. today.

AFTERNOON SESSION

The house met at 1:45 p.m. and was called to order by the speaker.

**HR 975 - ADOPTED
(by Dutton)**

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 975**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 975, Honoring Nadine Helen Woods as she retires from the Houston Independent School District.

HR 975 was adopted without objection.

**HR 976 - ADOPTED
(by Dutton)**

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 976**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 976, Honoring Kimberly Y. Williams for earning her doctor of pharmacy degree from Texas Southern University.

HR 976 was adopted without objection.

MESSAGES FROM THE SENATE

Messages from the senate were received at this time (see the addendum to the daily journal, Messages from the Senate, Message Nos. 2 and 3).

**MOTION TO SUSPEND RULES FOR
CONSIDERATION OF CALENDARS**

Representative S. Turner moved to suspend Rule 6, Sections 8 and 9 of the House Rules to permit the house to consider house bills and resolutions that appear on today's supplemental calendar as postponed business or on the major state, constitutional amendments, general state, or resolutions calendars ahead of senate bills that appear as postponed business or on the general state calendar.

A record vote was requested.

Not receiving the necessary two-thirds vote, the motion to suspend the rules was lost by (Record 350): 95 Yeas, 49 Nays, 1 Present, not voting.

Yeas — Allen; Bailey; Berman; Bosse; Brimer; Burnam; Capelo; Chavez; Christian; Coleman; Cook; Counts; Crownover; Danburg; Davis, J.; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Glaze; Goolsby; Gray; Green; Gutierrez; Haggerty; Hardcastle; Hawley; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Isett; Janek; Jones, J.; Keffer; King, T.; Kitchen; Kolkhorst; Lewis, G.; Lewis, R.; Longoria; Luna; Martinez Fischer; Maxey; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Najera; Noriega; Oliveira; Olivo; Pitts; Puente; Rangel; Raymond; Reyna, A.; Sadler; Salinas; Shields; Smithee; Solis; Solomons; Thompson; Tillery; Turner, B.; Turner, S.; Uher; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wolens; Yarbrough; Zbranek.

Nays — Averitt; Bonnen; Brown, B.; Brown, F.; Callegari; Carter; Chisum; Clark; Corte; Crabb; Craddick; Delisi; Denny; Driver; George; Goodman; Grusendorf; Hamric; Hartnett; Heflin; Hilderbran; Hill; Hunter; Hupp; Jones, D.; Jones, E.; Junell; Keel; King, P.; Kuempel; Madden; Marchant; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Pickett; Ramsay; Reyna, E.; Ritter; Seaman; Smith; Swinford; Talton; Telford; Truitt; Woolley.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander.

Absent — Eiland; Hilbert; Krusee; Wohlgemuth.

POSTPONED BUSINESS

The following bill was laid before the house as postponed business:

SB 980 ON SECOND READING (Walker - House Sponsor)

SB 980, A bill to be entitled An Act relating to the imposition by a municipality of a moratorium on property development in certain circumstances.

SB 980 was read second time on May 8, postponed until earlier today, and was again postponed until this time.

A point of order was pending against Amendment No. 2 on the grounds that it was not germane to the bill.

The speaker sustained the point of order.

The ruling precluded further consideration of Amendment No. 2.

SB 980, as amended, was passed to third reading.

GENERAL STATE CALENDAR SENATE BILLS SECOND READING

The following bills were laid before the house and read second time:

CSSB 79 ON SECOND READING
(Madden - House Sponsor)

CSSB 79, A bill to be entitled An Act relating to uniform election dates.

Amendment No. 1

Representative Madden offered the following amendment to **CSSB 79**:

Amend **CSSB 79** in SECTION 1 of the bill, by striking amended Section 3.004(a), Election Code (page 1, lines 6-13, Committee printing), and substituting the following:

(a) The following authority shall order an election:

(1) the county judge, for the general election for officers of the county government;

(2) the mayor, for the general election for city officers in a city with a population of 1.9 million or more; and

(3) the governing body of a political subdivision, other than a county or a city described by Subdivision (2), that has elective offices, for the general election for those officers.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Madden offered the following amendment to **CSSB 79**:

Amend **CSSB 79** as follows:

(1) In SECTION 2 of the bill, in amended Section 41.001(b)(2), Election Code (page 2, line 6, Committee printing), between "bonds" and "or the levy of a tax", insert "for any purpose authorized by law relating to public schools or colleges".

(2) In SECTION 2 of the bill, in amended Section 41.001(b)(2), Election Code (page 2, line 8, Committee printing), before "issuing or assuming", insert "having jurisdiction of the public school or college".

Amendment No. 2 was adopted without objection.

CSSB 79, as amended, was passed to third reading.

SB 865 ON SECOND READING
(T. King - House Sponsor)

SB 865, A bill to be entitled An Act relating to the changing of an ad valorem tax appraisal roll.

HR 986 - ADOPTED
(by Swinford)

Representative Swinford moved to suspend all necessary rules to take up and consider at this time **HR 986**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 986, Honoring Martha Allison on her exemplary record of service at the Borger Bus Station.

HR 986 was read and was adopted without objection.

SB 865 - (consideration continued)**Amendment No. 1**

Representative T. King offered the following amendment to **SB 865**:

Amend **SB 865** in Section 1 of the bill, amended Subsection (c), Section 25.25, Tax Code, by striking "shall [~~may~~]" and substituting "may".

Amendment No. 1 was adopted without objection.

SB 865, as amended, was passed to third reading.

SB 454 ON SECOND READING
(Alexander - House Sponsor)

SB 454, A bill to be entitled An Act relating to the collection and enforcement of tolls on certain toll roads and toll projects; providing for civil and criminal penalties.

Representative Alexander moved to postpone consideration of **SB 454** until 10 a.m. Wednesday, May 16.

The motion prevailed without objection.

CSSB 626 ON SECOND READING
(Averitt - House Sponsor)

CSSB 626, A bill to be entitled An Act relating to liens on certain property related to certain criminal offenses and the effect of forfeiture of that property; providing penalties.

CSSB 626 was passed to third reading.

CSSB 140 ON SECOND READING
(Naishtat - House Sponsor)

CSSB 140, A bill to be entitled An Act relating to the appointment of a person who has a history of abuse or neglect as a sole managing conservator.

Amendment No. 1

Representative Raymond offered the following amendment to **CSSB 140**:

Amend **CSSB 140** as follows:

On Page 1, line 10, after "child" and before the period insert the following:
". including a sexual assault in violation of Section 22.011 or 22.021 of the Penal Code that results in the other parent becoming pregnant with the child"

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Goodman offered the following amendment to **CSSB 140**:

Amend **CSSB 140** as follows:

(1) In SECTION 1 of the bill, strike the introductory language (Committee Printing, page 1, lines 5-6) and substitute the following:

SECTION 1. Section 153.004, Family Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

(2) At the end of amended Section 153.004(b), Family Code, (Committee Printing, page 1, line 17), add the following:

(e) It is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

Amendment No. 2 was adopted without objection.

CSSB 140, as amended, was passed to third reading.

SB 637 ON SECOND READING
(Hamric - House Sponsor)

SB 637, A bill to be entitled An Act relating to the creation of a local government transportation corporation by a navigation district.

(Speaker pro tempore in the chair)

Amendment No. 1

Representative Hamric offered the following amendment to **SB 637**:

Amend **SB 637** by striking SECTION 3 and substituting the following:

SECTION 3. Section 431.101, Transportation Code is amended by adding Subsection (h) to read as follows:

(h) A local government corporation formed by a navigation district shall not condemn a right-of-way through any part of a municipality without the consent of the municipality's governing body.

Amendment No. 1 was adopted without objection.

SB 637, as amended, was passed to third reading.

CSSB 236 ON SECOND READING
(Chavez and Goodman - House Sponsors)

CSSB 236, A bill to be entitled An Act relating to court-ordered medical support for certain children.

Representative Chavez moved to postpone consideration of **CSSB 236** until 10 a.m. tomorrow.

The motion prevailed without objection.

SB 414 ON SECOND READING
(Eiland and Seaman - House Sponsors)

SB 414, A bill to be entitled An Act relating to the regulation of certain insurance agents and to the consolidation of insurance agent licenses; providing penalties.

Representative Smithee moved to postpone consideration of **SB 414** until 10 a.m. Monday, May 14.

The motion prevailed without objection.

CSSB 601 ON SECOND READING
(Solis - House Sponsor)

CSSB 601, A bill to be entitled An Act relating to certain investments and rate reductions by insurance companies and related organizations; providing an administrative penalty.

Amendment No. 1

Representative G. Lewis offered the following amendment to **CSSB 601**:

(1). Amend **CSSB 601** by deleting the word "ownership" on page 1, lines 16, 21, and 23 and substituting therefor the words "voting or management."

(2). Amend **CSSB 601** by adding a new section (d) on page 10, line 5 and renumber subsequent sections appropriately to read as follows:

(d). Nothing in this subchapter shall limit an insurance company's ownership of nonvoting equity interests in a certified capital company.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Burnam offered the following amendment to **CSSB 601**:

Amend **CSSB 601** (house committee printing) as follows:

(1) In Article 4.51, Insurance Code, as added by SECTION 1 of the bill, following Subdivision (13) (page 6, between lines 22 and 23), insert the following:

(14) "Strategic investment area" means an area of this state that qualifies as a strategic investment area under Subchapter O, Chapter 171, Tax Code, or, after the expiration of that subchapter, an area that qualified as a strategic investment area under that subchapter immediately before its expiration.

(15) "Strategic investment business" means a qualified business that has its principal business operations located in one or more strategic investment areas and intends to maintain business operations in the strategic investment areas after receipt of the investment by the certified capital company.

(2) In Article 4.56, Insurance Code, as added by SECTION 1 of the bill, at the end of Subsection (b) (page 9, line 24), insert the following: "At least 30 percent of the amount of qualified investments required by Subsection (a)(1) and (2) of this article must be placed in a strategic investment business."

(3) In Article 4.57, Insurance Code, as added by SECTION 1 of the bill, in Subsection (a) (page 11, line 24), strike "or an early stage business" and substitute ", an early stage business, or a strategic investment business".

(4) In Article 4.57, Insurance Code, as added by SECTION 1 of the bill, in Subsection (b) (page 12, line 1), strike "or an early stage business" and substitute ", an early stage business, or a strategic investment business".

(5) In Article 4.57, Insurance Code, as added by SECTION 1 of the bill, in Subsection (c) (page 12, line 10), strike "or an early stage business" and substitute ", an early stage business, or a strategic investment business".

Amendment No. 2 was adopted without objection.

CSSB 601, as amended, was passed to third reading. (Carter recorded voting no)

CSSB 1043 ON SECOND READING
(Hunter - House Sponsor)

CSSB 1043, A bill to be entitled An Act relating to creating a committee to appoint a poet laureate, a state musician, and state artists.

CSSB 1043 was passed to third reading.

SB 1140 ON SECOND READING
(Hunter - House Sponsor)

SB 1140, A bill to be entitled An Act relating to reemployment of a member of the state military forces by a private employer.

SB 1140 was passed to third reading.

SB 1282 ON SECOND READING
(Oliveira, Seaman, Deshotel, Solis, and Luna - House Sponsors)

SB 1282, A bill to be entitled An Act relating to the funding of port transportation or facility projects or port studies.

Representative Oliveira moved to postpone consideration of **SB 1282** until 10 a.m. tomorrow.

The motion prevailed without objection.

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

SB 1806 ON SECOND READING
(McReynolds - House Sponsor)

SB 1806, A bill to be entitled An Act relating to the sale and lease of vacant and unsurveyed public school land.

SB 1806 was considered in lieu of **CSHB 3410**.

SB 1806 was read second time.

Amendment No. 1

Representative McReynolds offered the following amendment to **SB 1806**:

Amend **HB 1806** as follows:

(1) In SECTION 1 of the bill, in added Section 51.186(b)(2)(B), Natural Resources Code (House Committee Report, page 13, line 1), between "a" and "licensed", insert "county surveyor or".

(2) In SECTION 1 of the bill, in added Section 51.188, Natural Resources Code (House Committee Report, page 14, line 10), strike "exists" and substitute "does or does not exist".

(3) In SECTION 1 of the bill, strike added Section 51.190, Natural Resources Code (House Committee Report, page 14, lines 15-18), and substitute the following:

Sec. 51.190. STANDING TO APPEAL. A person may appeal the commissioner's final order if the person:

(1) is an applicant;

(2) has a present legal interest in the surface or mineral estate at the time an application is filed; or

(3) acquires a legal interest before the date of the commissioner's final order.

Amendment No. 1 was adopted without objection.

SB 1806, as amended, was passed to third reading.

CSHB 3410 - LAID ON THE TABLE SUBJECT TO CALL

Representative McReynolds moved to lay **CSHB 3410** on the table subject to call.

The motion prevailed without objection.

CSHB 2351 ON SECOND READING **(by Hinojosa)**

CSHB 2351, A bill to be entitled An Act relating to requiring the corroboration of certain testimony in a criminal case involving controlled substances.

CSHB 2351 was read second time on May 8 and was postponed until this time.

Amendment No. 1

Representative Keel offered the following amendment to **CSHB 2351**:

Amend **CSHB 2351** on page 1, line 24, and page 2, line 10, by striking "two years" and substituting "one year".

Amendment No. 1 was adopted without objection.

A record vote was requested.

CSHB 2351, as amended, was passed to engrossment by (Record 351): 93 Yeas, 47 Nays, 2 Present, not voting.

Yeas — Bailey; Bosse; Brimer; Brown, B.; Burnam; Capelo; Chavez; Christian; Clark; Coleman; Crabb; Danburg; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Glaze; Goodman; Gray; Green; Gutierrez; Hamric; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Hopson; Howard; Hupp; Isett; Jones, E.; Jones, J.; Keel; King, T.; Kitchen; Kolkhorst; Krusee; Lewis, G.; Lewis, R.; Longoria; Luna; Martinez Fischer; Maxey; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Mowery; Naishtat; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Salinas; Shields; Smith; Solis; Solomons; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Yarbrough; Zbranek.

Nays — Allen; Averitt; Berman; Bonnen; Brown, F.; Callegari; Carter; Chisum; Cook; Corte; Counts; Crownover; Davis, J.; Delisi; Denny; Driver; Elkins; Ellis; George; Grusendorf; Hardcastle; Hartnett; Hawley; Homer; Hope; Hunter; Jones, D.; Keffer; King, P.; Kuempel; Madden; Marchant; McCall;

Merritt; Miller; Morrison; Najera; Nixon; Reyna, E.; Seaman; Smithee; Swinford; Talton; Telford; Walker; Williams; Woolley.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Alexander.

Absent — Craddick; Eiland; Goolsby; Haggerty; Hilbert; Janek; Junell.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 351. I intended to vote no.

Crabb

When Record No. 351 was taken, I was in the house but away from my desk. I would have voted no.

Craddick

I was shown voting no on Record No. 351. I intended to vote yes.

McCall

MAJOR STATE CALENDAR HOUSE BILLS THIRD READING

The following bills were laid before the house and read third time:

HB 2107 ON THIRD READING **(by S. Turner, Longoria, and Bailey)**

HB 2107, A bill to be entitled An Act relating to the recovery of stranded costs and the crediting of negative stranded costs.

HB 2107 - STATEMENT OF LEGISLATIVE INTENT

The bill confirms the Public Utility Commission's authority and directs that a portion of any excess earnings found by the Public Utility Commission to exist be refunded to customers in their September 2001 utility bills. That is, **SB 7** gave the Public Utility Commission wide latitude in deciding how over-recovered stranded costs would be returned to utility ratepayers. What we're saying here is that a portion of these over-recoveries should be returned to ratepayers now.

As to any remaining over-recoveries, we're not changing existing law. The Public Utility Commission may deal with these over-recoveries in the manner it sees fit in accordance with existing law. In effect, we're telling the commission how to deal with a portion of the refunds, while leaving them full discretion to deal with the remainder under existing law. Except for the portion of the excess earnings to be returned to residential customers in September 2001, the bill leaves in place the Public Utility Commission's plan to return the remaining excess earnings to customers through lower rates starting January 2002, as provided in existing law.

Similarly, my original bill was not intended to change the Public Utility Commission's basic authority under existing law to deal with stranded costs, including negative stranded costs. It was intended to give the Public Utility

Commission greater guidance or direction about how to deal with any excess earnings or over-recoveries found to exist before the 2004 true-up proceeding.

I still believe that any negative stranded costs or windfall profits found to exist from deregulation should be returned to ratepayers, rather than retained by utilities or their generation affiliates. I, for one, never intended the utilities to reap tens of billions of dollars in excess profits at the expense of the ratepayers, and do not believe that's what **SB 7** stands for. Nothing in **HB 2107** should be understood as a retreat from that basic proposition.

S. Turner

HB 2107 was passed. (Berman, B. Brown, Hupp, and Isett recorded voting no)

REMARKS ORDERED PRINTED

Representative Williams moved to print remarks by Representative S. Turner.

The motion prevailed without objection.

HB 3452 ON THIRD READING

(by Gallego, Solis, McCall, Chisum, Luna, et al.)

HB 3452, A bill to be entitled An Act relating to the continuation and functions of the Texas Department of Economic Development and the operation, funding, and administration of economic development programs.

Amendment No. 1

Representative McClendon offered the following amendment to **HB 3452**:

Amend **HB 3452** on third reading by striking proposed Section 481.024(d), Government Code, and substituting the following:

(d) The office of the governor may use all money raised by the corporation as discretionary funds only for the purposes stated in the rules of the market Texas program to promote exceptional economic development projects in the state. The office of the governor may not use general revenue funds appropriated by the legislature for the market Texas program to promote exceptional economic development projects under this subsection.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative McClendon offered the following amendment to **HB 3452**:

Amend **HB 3452** on third reading as follows:

On page __, insert a new Section __ beginning on line __, and renumbering accordingly:

Sec. 481.0065, Government Code. OFFICE OF DEFENSE AFFAIRS. (a) The department shall:

- (1) establish and maintain an Office of Defense Affairs; and
 - (2) appoint a director to manage the Office of Defense Affairs.
- (b) The Office of Defense Affairs shall:

(1) provide information to defense-dependent communities, the legislature, the Texas congressional delegation, and state agencies regarding federal actions affecting military installations and missions;

(2) serve as a clearinghouse for:

(A) defense economic adjustment and transition information and activities ~~along with the Texas Business and Community Economic Development Clearinghouse~~; and

(B) information about:

(i) issues related to the operating costs and strategic value of federal military installations located in the state;

(ii) the loss of jobs in defense-dependent communities and defense-related businesses; and

(iii) interstate competition relative to defense strategies and incentive programs that other states are utilizing to maintain, expand and attract new defense contractors.

(3) provide assistance to defense-dependent communities that have experienced a defense-related closure or realignment, including the administration and oversight for implementing the programs established under Subtitle F, Title 4, Chapter 486, Government Code, and Subtitle G, Title 10, Chapter 2310, Government Code;

(4) assist defense-dependent communities in the design and execution of programs that enhance a community's relationship with military installations and defense-related businesses; ~~and~~

(5) assist communities in the retention, expansion and recruitment of defense-related businesses; and

(6) assist with the development of state strategies and programs to protect the state's existing military missions and position Texas to be competitive for new or expanded military missions.

(7) serve as the states focal point for the coordination of all issues and policies that would affect active, closed or realigned military installations and defense related businesses.

(c) The Office of Defense Affairs shall prepare an annual report about the active military installations, defense-dependent communities, and defense-related businesses in this state. The report must include:

(1) an economic impact statement describing in detail the effect of the military on the economy of this state;

(2) a statewide assessment of active military installations and current missions;

(3) a statewide strategy to attract defense-related business and prevent future defense closures and realignments;

(4) a list of state and federal activities that have significant impact on active military installations and current missions;

(5) a statement identifying:

(A) the state and federal programs and services that assist defense-dependent communities impacted by military base closures or realignments and the efforts to coordinate those programs; and

(B) the efforts to coordinate state agency programs and services that assist defense-dependent communities in retaining active military installations and current missions;

(6) an evaluation of initiatives to retain existing defense-related businesses; and

(7) a list of agencies with regulations, policies, programs, or services that impact the operating costs or strategic value of federal military installations and activities in the state.

(d) State agencies shall cooperate with and assist the Office of Defense Affairs in the preparation of the report required under Subsection (c) including providing information about regulations, policies, programs, and services that may impact defense-dependent communities, defense-related businesses, and the viability of existing Texas military missions. The Office of Defense Affairs shall submit its report to the governor and the legislature not later than July 1 of each year.

(e) The Office of Defense Affairs shall coordinate an annual meeting with the head of each state agency, members of the Texas Strategic Military Planning Commission, and members of the legislature whose districts contain active, closed, or realigned military installations to discuss the implementation of the recommendations outlined in the report required under Subsection (c).

(f) The Office of Defense Affairs shall develop and maintain a database of the names and public business information of all prime contractors and subcontractors operating in this state who perform defense related work.

(g) In this section, "state agency" has the meaning assigned by Section 2151.002.

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Luna offered the following amendment to **HB 3452**:

Amend **HB 3452** on third reading by adding the following appropriately numbered SECTION and renumber subsequent SECTIONS appropriately:

SECTION __. On the effective date of this Act, the Texas Workforce Commission shall transfer any money remaining in the holding fund created under Section 204.122, Labor Code, to the unemployment compensation fund. The Texas Workforce Commission shall deposit any money collected by the employment training investment assessment after the effective date if this Act directly into the unemployment compensation fund.

Amendment No. 3 was adopted without objection.

A record vote was requested.

HB 3452, as amended, was passed by (Record 352): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Christian; Clark; Cook; Corte; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard;

Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Alexander.

Absent — Chisum; Coleman; Hilbert; Junell; Swinford.

MAJOR STATE CALENDAR HOUSE BILLS SECOND READING

The following bill was laid before the house and read second time:

CSHB 3171 ON SECOND READING (by Thompson)

CSHB 3171, A bill to be entitled An Act relating to the creation, composition, and operation of certain district courts.

Amendment No. 1

Representative Thompson offered the following amendment to **CSHB 3171**:

Amend **CSHB 3171** as follows:

(1) By adding a new Section 7 and 8 to read as follows and renumber the subsequent section appropriately:

SECTION 7. Subchapters B, C, D, and E, Chapter 24, Government Code, are repealed.

SECTION 8. Chapter 24, Government Code, is amended by adding Subchapter AA to read as follows:

SUBCHAPTER AA. JUDICIAL DISTRICTS

Sec. 24.0001. DISTRICT A-1. Judicial District A-1 is composed of the counties of Anderson, Andrews, Angelina, Archer, Armstrong, Bailey, Bastrop, Baylor, Bell, Blanco, Borden, Bosque, Bowie, Brazos, Briscoe, Brown, Burleson, Burnet, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Gaines, Garza, Glasscock, Gray, Grayson, Gregg, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Irion, Jack, Jasper, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lampasas, Lee, Leon, Liberty, Limestone, Lipscomb, Llano, Loving, Lubbock, Lynn,

McCulloch, McLennan, Madison, Marion, Martin, Mason, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Reagan, Red River, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Van Zandt, Walker, Ward, Washington, Wheeler, Wichita, Wilbarger, Williamson, Winkler, Wise, Wood, Yoakum, and Young.

Sec. 24.0002. DISTRICT A-2. Judicial District A-2 is composed of the counties of Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Crockett, Culberson, De Witt, Dimmit, Duval, Edwards, El Paso, Fayette, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Guadalupe, Harris, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Nueces, Orange, Pecos, Presidio, Real, Reeves, Refugio, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Victoria, Waller, Webb, Wharton, Willacy, Wilson, Zapata, and Zavala."; and

(2) On page 3, after line 16 add the following;

"(d) Sections 7 and 8 of this Act take effect December 31, 2003."

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative P. King offered the following amendment to **CSHB 3171**:

Amend **CSHB 3171** as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION __. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.561 to read as follows:

Sec. 24.561. 416TH JUDICIAL DISTRICT (PARKER COUNTY). The 416th Judicial District is composed of Parker County.

(b) Section 32.184(a), Government Code, is amended to read as follows:

(a) The Commissioners Court of Parker County may budget for and pay the judges ~~[judge]~~ of the 43rd and 416th judicial districts ~~[Judicial District]~~ an annual salary not to exceed \$7,800 for performing judicial and administrative services.

(c) Section 43.125, Government Code, is amended to read as follows:

Sec. 43.125. 43RD JUDICIAL DISTRICT. The voters of the 43rd Judicial District elect a district attorney who represents the state in all cases before the 43rd and 416th district courts.

(d) Section 152.1901(b), Human Resources Code, is amended to read as follows:

(b) The juvenile board shall elect one of its members as [district court judge is the] chairman [of the board].

(2) On page 2, line 27, strike "414th, and 415th" and substitute "414th, 415th, and 416th".

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative McCall offered the following amendment to **CSHB 3171**:

Amend **CSHB 3171** as follows:

(1) On page 2, between lines 26 and 27, insert the following SECTION and renumber the subsequent SECTION accordingly:

SECTION 1. Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.561 to read as follows:

Sec. 24.561. 416TH JUDICIAL DISTRICT (COLLIN COUNTY). The 416th Judicial District is composed of Collin County.

(2) On page 2, line 27, strike "and 415th" and substitute "415th, and 416th".

Amendment No. 3 was adopted without objection.

Amendment No. 4

Representative Homer offered the following amendment to **CSHB 3171**:

Amend **CSHB 3171** as follows:

(1) Strike page 2, line 27, through page 3, line 6, and substitute the following:

SECTION 2. (a) Except as provided by Subsection (b) of this section, the 397th, 412th, 413th, 414th, and 415th judicial districts are created and this Act takes effect September 1, 2001.

(b) Sections 3(b) and (c) of this Act take effect June 1, 2002.

(c) The local administrative district judge shall transfer to the 412th District Court all cases from Fannin County that are pending in the 336th District Court on September 1, 2001, and all cases from Fannin County that are pending in the 6th District Court on June 1, 2002.

(2) On page 3, line 7, strike "(c)" and substitute "(d)".

(3) On page 3, line 8, strike "Subsection (b) of this section," and substitute "Subsection (c) of this section,".

Amendment No. 4 was adopted without objection.

CSHB 3171, as amended, was passed to engrossment. (Carter recorded voting no)

**CONSTITUTIONAL AMENDMENTS CALENDAR
HOUSE JOINT RESOLUTIONS
SECOND READING**

The following resolutions were laid before the house and read second time:

**CSHJR 22 ON SECOND READING
(by Wilson and Solis)**

CSHJR 22, A joint resolution proposing a constitutional amendment relating to certain claims against the state and agencies of the state.

Amendment No. 1

Representative Gallego offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** as follows:

(1) On page 1, lines 14-24, strike Subsections (b) and (c) and substitute the following:

(b) The aggregate limitation on governmental liability for each single occurrence provided by general law on the date of a claim covered by this section does not apply to that claim.

(2) Reletter the remaining sections accordingly.

Amendment No. 1 was withdrawn.

Amendment No. 2

Representative Hill offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** on page 2, between lines 2 and 3, by inserting the following new subsection and relettering subsequent subsections appropriately:

(e) For any claimant, the total amount of attorney's fees paid for a claim under this section may not exceed:

(1) 25 percent of the amount recovered by the claimant, if the amount is recovered after completion of a trial; or

(2) 15 percent of the amount recovered by the claimant, if the claim is before completion of a trial.

COMMITTEE MEETING ANNOUNCEMENT

The following committee meeting was announced:

Redistricting will not meet tonight.

CSHJR 22 - (consideration continued)

Amendment No. 2 was withdrawn.

Amendment No. 3

Representative Hill offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** on page 2, between lines 2 and 3, by inserting the following new subsection and relettering subsequent subsections appropriately:

(e) For any claimant, the total amount of attorney's fees paid for a claim under this section may not exceed:

(1) 25 percent of the amount recovered by the claimant, if the amount is recovered after selection of a jury in a trial; or

(2) 15 percent of the amount recovered by the claimant, if the claim is before selection of a jury in the trial.

Representative Dutton raised a point of order against further consideration of Amendment No. 3 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

The chair sustained the point of order.

The ruling precluded further consideration of Amendment No. 3.

Amendment No. 4

Representative Solis offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** as follows:

(1) On page 2, between lines 2 and 3, insert:

(e) An action brought under this section shall be brought in:

(1) Travis County; or

(2) the county in which the student's permanent address is located.

(2) On page 2, line 3, strike "(e)" and substitute "(f)".

Amendment No. 4 was withdrawn.

Amendment No. 5

Representative Solis offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** as follows:

(1) On page 2, between lines 2 and 3, insert:

(e) An action brought under this section shall be brought in Travis County

Amendment No. 5 was adopted without objection.

Amendment No. 6

Representative Clark offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** by adding an appropriately lettered Subsection to added Section 72, Article XVI, Texas Constitution, to read as follows and by renumbering existing Subsections accordingly:

(e) A judgment in an action or a settlement of a claim under this section bars any action involving the same subject matter by the claimant against any employee of the governmental unit whose act or omission gave rise to the claim.

Amendment No. 6 was adopted without objection.

Amendment No. 7

Representative Hill offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** by inserting the following Subsection as an appropriately numbers subsection of Section 72, Article XVI, Texas Constitution, and renumbering existing subsections of Section 72 accordingly:

() Of damages awarded in accordance with this section, 75 percent of those damages must go to the prevailing party, if the damages are awarded after a trial commences, and 85 percent of those damages must go to the prevailing party, if the parties settle before trial commences.

Amendment No. 7 was adopted without objection.

Amendment No. 8

Representative Gallego offered the following amendment to **CSHJR 22**:

Amend **CSHJR 22** on page 1, between lines 21 and 22, by inserting new Subsections (c) and (d), and relettering the subsequent subsections accordingly, to read as follows:

(c) By this section, neither the state, nor any of its employees, agents, departments, agencies, or political subdivisions, admits to liability for, or to the truth of, any allegation asserted by any claimant. The state does not waive any defense, of law or fact, available to the state or any of its employees or agents, but reserves every defense except the defense of immunity from suit or liability.

(d) The state or any employee, agent, department, agency, or political subdivision of the state is not liable for exemplary damages under this section.

Amendment No. 8 was adopted.

A record vote was requested.

CSHJR 22, as amended, failed of adoption by (Record 353): 55 Yeas, 82 Nays, 6 Present, not voting.

Yeas — Bailey; Bosse; Burnam; Capelo; Chavez; Christian; Clark; Coleman; Davis, Y.; Deshotel; Dukes; Dutton; Edwards; Ehrhardt; Farrar; Flores; Garcia; Giddings; Goolsby; Gray; Gutierrez; Hill; Hinojosa; Hochberg; Hodge; Hupp; Isett; Jones, J.; Keffer; Kitchen; Lewis, G.; Martinez Fischer; Maxey; McClendon; McReynolds; Moreno, J.; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Rangel; Raymond; Reyna, A.; Ritter; Solis; Thompson; Truitt; Turner, S.; Uresti; Villarreal; Wilson; Yarbrough.

Nays — Allen; Averitt; Berman; Bonnen; Brimer; Brown, B.; Brown, F.; Callegari; Carter; Chisum; Cook; Corte; Crabb; Craddick; Crownover; Davis, J.; Delisi; Denny; Driver; Elkins; Ellis; Farabee; Gallego; George; Geren; Glaze; Green; Grusendorf; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Homer; Hope; Hopson; Howard; Hunter; Janek; Jones, D.; Jones, E.; Keel; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Longoria; Luna; Madden; Marchant; McCall; Menendez; Merritt; Miller; Moreno, P.; Morrison; Mowery; Pitts; Puente; Ramsay; Reyna, E.; Salinas; Seaman; Shields; Smith; Smithee; Solomons; Swinford; Telford; Tillery; Turner, B.; Walker; West; Williams; Wise; Wohlgemuth; Wolens; Woolley; Zbranek.

Present, not voting — Mr. Speaker; Dunnam; Eiland; Goodman; Sadler; Uher(C).

Absent, Excused — Alexander.

Absent — Counts; Danburg; Hilbert; Junell; Lewis, R.; Talton.

STATEMENTS OF VOTE

I was shown voting no on Record No. 353. I intended to vote present, not voting.

Gallego

I was shown voting no on Record No. 353. I intended to vote yes.

Telford

CSHJR 44 ON SECOND READING**(by Flores)**

CSHJR 44, A joint resolution proposing a constitutional amendment authorizing the legislature to authorize taxing units other than school districts to exempt certain travel trailers from ad valorem taxation.

A record vote was requested.

CSHJR 44 was adopted by (Record 354): 135 Yeas, 7 Nays, 2 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Corte; Counts; Crabb; Craddick; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Villarreal; Walker; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Nays — Bonnen; Callegari; Crownover; Driver; King, P.; Miller; Uresti.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Alexander.

Absent — Eiland; Gutierrez; Hilbert; Junell; West.

STATEMENTS OF VOTE

I was shown voting no on Record No. 354. I intended to vote yes.

Callegari

I was shown voting no on Record No. 354. I intended to vote yes.

Crownover

I was shown voting no on Record No. 354. I intended to vote yes.

Miller

I was shown voting no on Record No. 354. I intended to vote yes.

Uresti

CSHJR 74 ON SECOND READING
(by Keel, Gallego, Uher, and Bonnen)

CSHJR 74, A joint resolution proposing a constitutional amendment relating to the investment and management of the permanent school fund.

Representative Keel moved to postpone consideration of **CSHJR 74** until 10 a.m. tomorrow.

The motion prevailed without objection.

GENERAL STATE CALENDAR
HOUSE BILLS
THIRD READING

The following bills were laid before the house and read third time:

HB 2522 ON THIRD READING
(by Wilson)

HB 2522, A bill to be entitled An Act relating to requiring the Texas Department of Transportation to establish and maintain a state airport in Central Texas.

HB 2522 was passed.

HB 3631 ON THIRD READING
(by S. Turner and Hochberg)

HB 3631, A bill to be entitled An Act relating to implementation of policies requiring successful performance on assessment instruments for advancement to certain grade levels in public schools.

HB 3631 was passed.

HB 1945 ON THIRD READING
(by Smithee)

HB 1945, A bill to be entitled An Act relating to the rulemaking authority of the commissioner of insurance.

HB 1945 was passed.

HB 2098 ON THIRD READING
(by Morrison, Hopson, Menendez, et al.)

HB 2098, A bill to be entitled An Act relating to the punishment for the offense of unlawful restraint.

HB 2098 was passed.

HB 2570 ON THIRD READING
(by Olivo, S. Turner, Dunnam, Dutton, Capelo, et al.)

HB 2570, A bill to be entitled An Act relating to alternative compensatory criteria for promotion to certain grade levels in public school.

HB 2570 was passed.

HB 3623 ON THIRD READING
(by Flores)

HB 3623, A bill to be entitled An Act relating to the transfer of certain underused real property owned or controlled by the state to political subdivisions for use as affordable and accessible housing.

HB 3623 was passed.

HB 2578 ON THIRD READING
(by Haggerty)

HB 2578, A bill to be entitled An Act relating to the subpoena and investigative authority of the Texas Lottery Commission for the regulation of bingo.

Amendment No. 1

Representative Christian offered the following amendment to **HB 2578**:

Amend **HB 2578**, second reading engrossment, on third reading, on page 2, between lines 7 and 8, by inserting the following:

(h) In the issuance of a subpoena under this section for the records of a religious society, the commission may subpoena only the portion of the records related to a bingo enterprise.

Amendment No. 1 was adopted without objection.

HB 2578, as amended, was passed.

HB 2735 ON THIRD READING
(by Thompson)

HB 2735, A bill to be entitled An Act relating to the certification and licensing of court interpreters; providing penalties.

HB 2735 was passed.

HB 2759 ON THIRD READING
(by Smith)

HB 2759, A bill to be entitled An Act relating to the date by which a school district must file its annual audit report with the Texas Education Agency.

HB 2759 was passed.

HB 2776 ON THIRD READING
(by Wise, Swinford, Counts, Hinojosa, Carter, et al.)

HB 2776, A bill to be entitled An Act relating to the establishment of a colonia self-help program.

A record vote was requested.

HB 2776 was passed by (Record 355): 142 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Averitt; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Christian; Clark;

Coleman; Cook; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Alexander.

Absent — Bailey; Chisum; Corte; Hilbert; Junell.

HB 2800 ON THIRD READING

(by Hodge, Haggerty, Hawley, Crabb, Ritter, et al.)

HB 2800, A bill to be entitled An Act relating to the restoration of forfeited good conduct time.

Amendment No. 1

Representative Hodge offered the following amendment to **HB 2800**:

Amend **HB 2800** on 3rd Reading, in SECTION 2 of the bill, by striking "shall restore previously forfeited good conduct time" and substituting "shall establish a procedure to restore previously forfeited good conduct time".

Amendment No. 1 was adopted without objection.

HB 2800, as amended, was passed.

HB 2871 ON THIRD READING

(by Ramsay)

HB 2871, A bill to be entitled An Act relating to rate rollback for certain lines of insurance.

Amendment No. 1

Representative Ramsay offered the following amendment to **HB 2871**:

Amend **HB 2871** by adding the following appropriately numbered SECTIONS and renumbering existing SECTIONS of the bill appropriately:

SECTION __. Subchapter O, Chapter 5, Insurance Code, is amended by adding Article 5.132 to read as follows:

Art. 5.132. RATE ROLLBACK FOR CERTAIN LINES OF INSURANCE
Sec. 1. FINDINGS. The legislature finds that:

(1) the cost of litigation against insureds and their insurers, the possibility of large and unjust judgments, and the uncertainty created by a litigious environment within this state have been significant factors in the high cost of certain lines of insurance;

(2) legislation enacted by regular sessions of the 75th, 76th, and 77th legislatures, and legislation passed by or pending in the Congress of the United States, is intended to meaningfully reform the civil justice system of this state and this nation and will result in reductions in the cost of litigation and in the size of judgments;

(3) certain decisions by the Supreme Court of Texas and federal appellate courts during the years 1995-2001 have resulted in reductions in the size of certain judgments;

(4) it can be reasonably anticipated that there will be additional legislation and court decisions in the future that will result in reductions in the cost of litigation and in the size of judgments;

(5) while the monetary effect of the legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience;

(6) the delay described by Subdivision (5) of this section will result in a windfall for the insurers benefitted by the changes described by Subdivisions (2), (3), and (4) of this section, and this benefit should be passed on to their insureds; and

(7) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured public of this state.

Sec. 2. APPLICABILITY OF ARTICLE; REPORTING. (a) This article applies to any insurer that is authorized to engage in business in this state and that is authorized to write the type of coverage described by Subsection (b) of this section, including:

(1) a capital stock company;

(2) a mutual company;

(3) a Lloyd's plan; and

(4) a reciprocal or interinsurance exchange.

(b) It is the intent of the legislature that all insurers, including county mutual insurers, joint underwriting associations, and others whose rates are not regulated, pass through the savings that accrue from the legislation and court decisions described by Section 1 of this article to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls, or informational hearings or through any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential only to the extent the information is privileged and confidential under this code or other laws for other insurers licensed and writing the same line of insurance in this state. The information remains privileged and confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction. Sections 3 and 4 of this article do not apply to the nonrate regulated insurers covered by this subsection.

(c) This article applies only to rates for:

(1) private passenger automobile liability insurance policies or coverage;

(2) the liability portion of homeowners, farm and ranch owners, and renters insurance policies or coverage; and

(3) garage liability insurance policies or coverage.

Sec. 3. RATE ROLLBACK. (a) Notwithstanding Chapter 40 of this code, on or before September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to:

(1) determine a percentage of equitable across-the-board reductions in insurance rates required for each line of coverage described by Section 2 of this article; and

(2) adopt those rate reductions by rule.

(b) A rate reduction adopted under this section shall be based on the evidence presented at the hearing required by Subsection (a) of this section. The rates resulting from the rate reductions adopted under this section must be reasonable, adequate, and nonconfiscatory and may not be unfairly discriminatory or excessive.

(c) A rate reduction adopted under this section applies only to a policy delivered, issued for delivery, or renewed on or after the 90th day after the date the rule establishing the rate reduction is adopted.

(d) Any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section that is appealed or challenged remains in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use the rate reduction provided in the order being appealed or challenged, and the rate reduction is lawful and valid during the period of the appeal or challenge.

(e) The commissioner shall consider the effect of the legislation and court decisions described by Section 1 of this article in determining rates under Section 5, Article 21.81, of this code.

Sec. 4. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed for a line of coverage described by Section 2 of this article on or after the effective date of a rate reduction for that line adopted under Section 3 of this article shall reflect the rate reduction. The commissioner shall disapprove a rate if the commissioner finds that the filed rate does not reflect that reduction.

(b) The commissioner is not required to disapprove a filed rate that reflects less than the full amount of the rate reduction imposed under Section 3 of this article if:

(1) the commissioner determines based on clear and convincing evidence that an insurer will be financially unable to continue writing the line of coverage; or

(2) the rate reduction would likely result in placing the insurer in a hazardous financial condition.

Sec. 5. CONTINUATION OF REDUCTION. After the conclusion of each regular legislative session, beginning with the 78th legislative session, the commissioner shall conduct a review of state and federal legislation and court decisions analogous to the legislation and court decisions described by Section 1 of this article to determine if any legislation or court decisions

can reasonably be anticipated to reduce the cost of litigation or the amount of damages. If the commissioner determines that a reduction is likely, the commissioner shall order an additional rate rollback, as provided by this article, to begin on January 1 of the following even-numbered year.

Sec. 6. MODIFICATION. The commissioner by bulletin or directive may, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction adopted under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any of the legislation described by Section 1 of this article on which the commissioner based the rate reduction.

Sec. 7. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. The rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 8. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and shall report the commissioner's findings and recommendations to the legislature.

SECTION _____. (a) A rate reduction adopted under this section or Article 5.132, Insurance Code, as added by this Act, does not apply to a policy or coverage delivered, issued for delivery, or renewed before January 1, 2002.

(b) Notwithstanding Section 3(a), Article 5.132, Insurance Code, as added by this Act, on or before October 1, 2001, the commissioner of insurance by rule shall adopt an appropriate rate reduction for each line of coverage described by Section 2 of that article. A rate reduction adopted under this subsection shall be developed without consideration of the effect of the legislation and court decisions described by Section 1, Article 5.132.

(c) Notwithstanding Subsection (b) of this section, if the commissioner of insurance has not adopted rate reductions required by that subsection before January 1, 2002, the following reductions, measured from the base rates in effect on April 1, 2001, apply to each line of coverage described by Section 2, Article 5.132, Insurance Code, as added by this Act, delivered, issued for delivery, or renewed on or after January 1, 2002:

- (1) private passenger automobile liability insurance, 15 percent;
- (2) the liability portions of homeowners, farm and ranch owners, and renters insurance, 5 percent; and
- (3) garage liability insurance, 15 percent.

(d) A rate filed under an order of the commissioner of insurance issued before May 1, 2001, is not subject to the rate reduction required by this section or Article 5.132, Insurance Code, as added by this Act, before January 1, 2002.

Amendment No. 1 was adopted without objection.

A record vote was requested.

HB 2871, as amended, was passed by (Record 356): 140 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Christian; Clark; Coleman; Cook; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Green; Grusendorf; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Talton; Telford; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbraneck.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Alexander.

Absent — Chisum; Corte; Hilbert; Junell; Mowery; Swinford; Thompson.

STATEMENT OF VOTE

When Record No. 356 was taken, I was in the house but away from my desk. I would have voted yes.

Swinford

HB 2807 ON THIRD READING (by Kitchen, Chavez, Naishtat, and Maxey)

HB 2807, A bill to be entitled An Act relating to a demonstration project to extend Medicaid coverage to certain low-income individuals.

Amendment No. 1

Representative Kitchen offered the following amendment to **HB 2807**:

Amend **HB 2807** on third reading as follows:

- (1) On page 3, line 9, strike the comma.
- (2) On page 3, strike line 10.

Amendment No. 1 was adopted without objection.

A record vote was requested.

HB 2807, as amended, was passed by (Record 357): 141 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Allen; Averitt; Bailey; Berman; Bonnen; Bosse; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Capelo; Carter; Chavez; Chisum; Christian; Clark; Coleman; Cook; Counts; Crabb; Craddick; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Denny; Deshotel; Driver; Dukes;

Dunnam; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Ellis; Farabee; Farrar; Flores; Gallego; Garcia; George; Geren; Giddings; Glaze; Goodman; Goolsby; Gray; Gutierrez; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hilderbran; Hill; Hinojosa; Hochberg; Hodge; Homer; Hope; Hopson; Hunter; Hupp; Isett; Janek; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Najera; Nixon; Noriega; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Reyna, E.; Ritter; Sadler; Salinas; Seaman; Shields; Smith; Smithee; Solis; Solomons; Swinford; Talton; Telford; Thompson; Tillery; Truitt; Turner, B.; Turner, S.; Uresti; Villarreal; Walker; West; Williams; Wilson; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker; Uher(C).

Absent, Excused — Alexander.

Absent — Corte; Green; Grusendorf; Hilbert; Howard; Junell.

HB 2921 ON THIRD READING
(by J. Jones and Hodge)

HB 2921, A bill to be entitled An Act relating to requiring verification of information regarding potentially ineligible voters produced for a county by a private business entity.

HB 2921 was passed.

GENERAL STATE CALENDAR
HOUSE BILLS
SECOND READING

The following bills were laid before the house and read second time:

CSHB 2925 ON SECOND READING
(by J. Jones and Hodge)

CSHB 2925, A bill to be entitled An Act relating to the use of a receipt issued by certain voter registration entities to a person on completing an application for voter registration.

CSHB 2925 was passed to engrossment. (Shields recorded voting no)

HB 2964 ON SECOND READING
(by Hamric)

HB 2964, A bill to be entitled An Act relating to the confidentiality of pleadings and protective order applications in certain proceedings in the Family Code.

Amendment No. 1 (Committee Amendment No. 1)

On behalf of Representative Hartnett, Representative Goodman offered the following committee amendment to **HB 2964**:

Amend **HB 2964** as follows:

- (1) on page 1, line 8, strike "2.8" and substitute "2.2";
- (2) on page 1, line 19, strike "2.8" and substitute "2.2"; and,
- (3) on page 2, line 7, strike "2.8" and substitute "2.2".

Representative Goodman moved to table Amendment No. 1.

The motion to table prevailed.

Amendment No. 2

Representative Goodman offered the following amendment to **HB 2964**:

Amend **HB 2964** as follows:

- (1) On page 1, line 8, strike "2.8" and substitute "1.4";
- (2) On page 1, line 19, strike "2.8" and substitute "1.4";
- (3) On page 2, line 7, strike "2.8" and substitute "1.4".

Amendment No. 2 was adopted without objection.

HB 2964, as amended, was passed to engrossment.

HB 2989 ON SECOND READING **(by Gutierrez, Chavez, and Capelo)**

HB 2989, A bill to be entitled An Act relating to establishing an acanthosis nigricans screening program in certain public and private schools.

HB 2989 was passed to engrossment.

CSHB 3012 ON SECOND READING **(by Smithee)**

CSHB 3012, A bill to be entitled An Act relating to the regulation of joint negotiations by physicians with health benefit plans.

Amendment No. 1

Representative Smithee offered the following amendment to **CSHB 3012**:

Amend **CSHB 3012** as follows: (1) On page 2, line 13, between "CONFIDENTIALITY" and "Detailed" by inserting "(a)"

(2) On page 2, line 24, by adding a new subsection (b) to read as follows:

"(b) Final reports of approval or disapproval made by the attorney general in accordance with Sec. 29.09(a) of this chapter and final reports made by the department in accordance with Sec. 29.06(b) of this chapter are public."

Amendment No. 1 was adopted without objection.

CSHB 3012, as amended, was passed to engrossment.

CSHB 3038 ON SECOND READING **(by Isett)**

CSHB 3038, A bill to be entitled An Act relating to the employment of Medicaid recipients and to the enrollment of Medicaid recipients and state child health plan enrollees in certain group health benefit plans.

CSHB 3038 was passed to engrossment.

CSHB 3147 ON SECOND READING
(by Smith, Flores, Truitt, and Hochberg)

CSHB 3147, A bill to be entitled An Act relating to allowing certain retirees of the Teacher Retirement System of Texas to be employed as principals without losing retirement benefits.

CSHB 3147 was passed to engrossment.

HB 3164 ON SECOND READING
(by Chavez)

HB 3164, A bill to be entitled An Act relating to standards for prekindergarten programs and coordination of resources among prekindergarten programs and other child-care programs.

Amendment No. 1

Representative Talton offered the following amendment to **HB 3164**:

Amend **HB 3164** on page 1, line 22, after the period, by adding the following:

"The Texas Education Agency shall enter into an interagency agreement with the Department of Protective and Regulatory Services for the department to ensure compliance with the requirements of this subsection. The Department of Protective and Regulatory Services may collect a fee to offset the cost of providing the inspection service."

Amendment No. 1 was adopted without objection.

HB 3164, as amended, was passed to engrossment.

CSSB 873 ON SECOND READING
(B. Brown - House Sponsor)

CSSB 873, A bill to be entitled An Act relating to infrastructure planning in certain urban counties.

CSSB 873 was considered in lieu of **HB 2762**.

Amendment No. 1

Representative Howard offered the following amendment to **CSSB 873**:

Amend **CSSB 873** as follows:

(1) In SECTION 1 of the bill (Committee Printing, page 1, lines 20-24 and page 2, lines 1-3) strike proposed Section 232.101(a), Local Government Code.

(2) In SECTION 1 of the bill, in proposed Section 232.101, Local Government Code (Committee Printing, page 2, line 4), strike "(b)".

Representative G. Lewis moved to table Amendment No. 1.

The motion to table prevailed.

Representative Howard raised a point of order against further consideration of **CSSB 873** under Rule 8, Section 3 of the House Rules on the grounds that the bill contains more than one subject.

The point of order was withdrawn.

Amendment No. 2

Representative B. Brown offered the following amendment to **CSSB 873**:

Amend **CSSB 873** as follows:

On page 4, line 24 to page 5, line 1, strike all of SECTION 2, and replacing with the following:

SECTION 2. Subsections (a) & (c), Section 242.001, Local Government Code, is amended to read as follows:

(a) This section applies only to a county operating under Section 232.001-232.005 or Subchapter B, ~~[or] C, or E~~, Chapter 232.

(c) In the extraterritorial jurisdiction of a municipality, the municipality may regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities, and the county may regulate subdivisions under Sections 232.001-232.005, Subchapter B, ~~[or] C, or E~~, Chapter 232, and other statutes applicable to counties. If a municipal regulation conflicts with a county regulation, the more stringent provisions prevail.

Amendment No. 2 was adopted without objection.

Amendment No. 3

Representative Green offered the following amendment to **CSSB 873**:

Amend **CSSB 873** as follows:

On page 2, line 16, insert:

(c) No authority shall be granted to counties under subsection (a) with regard to a tract of land located outside the limits of a municipality being divided into four or fewer parts if each of the lots is to be sold, given, or otherwise transferred to an individual who is related to the owner within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

(d) No authority shall be granted to counties under subsection (a) with regard to a tract of land located outside the limits of a municipality if the tract is being divided into two or more parts if: (1) all of the lots of the subdivision are more than 5 acres in area; and (2) the owner does not lay out a part of the tract described by Section 232.001(a)(3).

Amendment No. 3 was adopted without objection.

CSSB 873 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE GREEN: Representative Brown, I just have a couple of questions for legislative intent. First of all, thank you for bringing this legislation and helping our rural counties that are next to growing areas because we do have a problem with our unincorporated areas. We have a specific list in the bill of things that this does not authorize them to do. One of the things that's not really listed in the bill that I am concerned about is impervious cover. That is where an entity can control how much of the land can be covered by driveways or buildings. Is your intent at all for this legislation to give counties authority to control impervious cover?

REPRESENTATIVE B. BROWN: No.

GREEN: Is it your intent at all by this legislation for counties to have the authority to require certain set-asides for green space?

B. BROWN: No, there's no zoning allowed in this bill and no land use either.

GREEN: Is it your intent at all for this legislation to give counties the authority to require mitigation fees?

B. BROWN: It's not addressed in this bill at all.

GREEN: So it wouldn't be your intent for them to get that from this legislation?

B. BROWN: No.

GREEN: What about land use and zoning?

B. BROWN: Land use and zoning are not part of this bill and are not allowed under this bill.

GREEN: Thank you very much, Representative Brown.

REMARKS ORDERED PRINTED

Representative Green moved to print remarks by Representative Brown and Representative Green.

The motion prevailed without objection.

CSSB 873, as amended, was passed to third reading. (Telford recorded voting no)

HB 2762 - LAID ON THE TABLE SUBJECT TO CALL

Representative B. Brown moved to lay **HB 2762** on the table subject to call.

The motion prevailed without objection.

CSHB 3504 ON SECOND READING (by Allen)

CSHB 3504, A bill to be entitled An Act relating to sanctions imposed on certain persons following modification of parole or release on mandatory supervision.

CSHB 3504 was passed to engrossment.

CSHB 3613 ON SECOND READING (by Martinez Fischer)

CSHB 3613, A bill to be entitled An Act relating to the sentencing of certain Class C habitual offenders.

Amendment No. 1

Representative Martinez Fischer offered the following amendment to **CSHB 3613**:

Amend **CSHB 3613** on page 1, line 11, between "supervision" and the

period, by inserting "if the court finds that the defendant would benefit from community supervision and enters its finding on the record".

Amendment No. 1 was adopted without objection.

CSHB 3613, as amended, was passed to engrossment.

CSHB 1654 ON SECOND READING
(by Talton)

CSHB 1654, A bill to be entitled An Act relating to the disclosure to the public of information in certain arrest warrants and the affidavits filed in connection with the application for those warrants.

Amendment No. 1

Representative Keel offered the following amendment to **CSHB 1654**:

Amend **CSHB 1654** by adding the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill appropriately:

SECTION __. Article 15.26, Code of Criminal Procedure, is amended to read as follows:

Art. 15.26. **AUTHORITY TO ARREST MUST BE MADE KNOWN.** In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, provided the warrant was issued under the provisions of this Code, but upon request he shall show the warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of arrest he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

Amendment No. 1 was adopted without objection.

CSHB 1654, as amended, was passed to engrossment.

HB 63 ON SECOND READING
(by Wolens, Menendez, et al.)

HB 63, A bill to be entitled An Act relating to the suspension of a person's driver's license following the person's arrest for certain intoxication offenses.

Amendment No. 1

Representatives Allen and Wolens offered the following amendment to **HB 63**:

Amend **HB 63** by adding a new section to the bill, appropriately numbered, to read as follows, and renumbering subsequent sections of the bill accordingly:

SECTION _____. (a) Section 524.051(a), Transportation Code, is amended to read as follows:

(a) A driver's license suspended under this chapter may not be reinstated or another driver's license issued to the person until the person pays the department a fee of \$125 [~~\$100~~] in addition to any other fee required by law.

(b) Section 724.046(a), Transportation Code, is amended to read as follows:

(a) A license suspended under this chapter may not be reinstated or a new license issued until the person whose license has been suspended pays to the department a fee of \$125 [~~\$100~~] in addition to any other fee required by law. A person subject to a denial order issued under this chapter may not obtain a license after the period of denial has ended until the person pays to the department a fee of \$125 [~~\$100~~] in addition to any other fee required by law.

(c) Sections 524.051(a) and 724.046(a), Transportation Code, as amended by this section, apply only to a person who applies to the Texas Department of Public Safety for the reinstatement of the person's driver's license under those sections after the effective date of this Act. A person who applied to that department for the reinstatement of the person's license under those sections before the effective date of this Act is covered by the law in effect on the date the person applied for the reinstatement, and the former law is continued in effect for that purpose.

(Hochberg in the chair)

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Hope offered the following amendment to **HB 63**:

Amend **HB 63** as follows (House Committee Printing):

(1) On page 4, between lines 13 and 14, insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 724.002, Transportation Code, is amended to read as follows:

Sec. 724.002. **APPLICABILITY.** The provisions of this chapter that apply to suspension of a license for refusal to submit to the taking of a specimen (Sections 724.013, 724.015, and 724.048 and Subchapters C and D) apply only to a person arrested for an offense involving the operation of a motor vehicle or watercraft.

(2) On page 7, line 4, between "vehicle" and "while", insert "or watercraft".

(3) On page 9, between lines 19 and 20, insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS of the bill accordingly:

SECTION 14. Section 724.042, Transportation Code, is amended to read as follows:

Sec. 724.042. **ISSUES AT HEARING.** The issues at a hearing under this subchapter are whether:

(1) reasonable suspicion or probable cause existed to stop or arrest the person;

(2) probable cause existed to believe that the person was;
(A) operating a motor vehicle in a public place while intoxicated; or

(B) operating a watercraft while intoxicated;

(3) the person was placed under arrest by the officer and was requested to submit to the taking of a specimen; and

(4) the person refused to submit to the taking of a specimen on request of the officer.

Amendment No. 2 was withdrawn.

Amendment No. 3

Representative Dunnam offered the following amendment to **HB 63**:

Amend **HB 63** as follows:

- (1) Strike SECTION 2 of the bill.
- (2) Strike SECTION 4 of the bill.
- (3) Strike SECTION 5 of the bill.
- (4) Strike SECTION 6 of the bill.
- (5) Strike SECTION 8 of the bill.
- (6) Strike SECTION 10 of the bill.
- (7) Strike SECTION 11 of the bill.
- (8) Renumber the sections of the bill accordingly.

Representative Wolens moved to table Amendment No. 3.

A record vote was requested.

The motion to table prevailed by (Record 358): 76 Yeas, 65 Nays, 2 Present, not voting.

Yeas — Allen; Berman; Bonnen; Brimer; Brown, B.; Brown, F.; Burnam; Callegari; Carter; Chisum; Christian; Clark; Cook; Corte; Counts; Crabb; Craddick; Denny; Driver; Ehrhardt; Elkins; Ellis; George; Glaze; Goolsby; Green; Grusendorf; Haggerty; Hamric; Hardcastle; Hartnett; Hawley; Heflin; Hill; Hope; Howard; Hunter; Isett; Janek; Jones, E.; Keffer; King, P.; Kolkhorst; Krusee; Kuempel; Lewis, R.; Madden; Marchant; McCall; Menendez; Merritt; Miller; Morrison; Mowery; Nixon; Oliveira; Pickett; Pitts; Ramsay; Reyna, E.; Seaman; Shields; Smith; Smithee; Solomons; Swinford; Talton; Truitt; Turner, B.; Uher; Walker; West; Williams; Wohlgemuth; Wolens; Woolley.

Nays — Bailey; Bosse; Capelo; Coleman; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farabee; Farrar; Flores; Gallego; Garcia; Geren; Giddings; Goodman; Gray; Gutierrez; Hinojosa; Hodge; Homer; Hopson; Hupp; Jones, J.; Keel; King, T.; Kitchen; Lewis, G.; Longoria; Luna; Martinez Fischer; Maxey; McClendon; McReynolds; Moreno, J.; Moreno, P.; Naishtat; Najera; Noriega; Olivo; Puente; Rangel; Raymond; Reyna, A.; Ritter; Sadler; Salinas; Solis; Telford; Thompson; Tillery; Turner, S.; Uresti; Villarreal; Wilson; Wise; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker; Hochberg(C).

Absent, Excused — Alexander.

Absent — Averitt; Chavez; Hilbert; Hilderbran; Jones, D.; Junell.

STATEMENT OF VOTE

When Record No. 358 was taken, I was in the house but away from my desk. I would have voted yes.

Hilderbran

HB 63 - REASON FOR VOTE

On the vote on Amendment No. 3 by Dunnam, my vote was cast in my absence. It was cast in error. My vote was to table.

Farabee

Amendment No. 4

Representative Hope offered the following amendment to **HB 63**:

Amend **HB 63** as follows (House Committee Printing):

(1) On page 4, between lines 13 and 14, insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS of the bill accordingly:

SECTION __. Section 724.002, Transportation Code, is amended to read as follows:

Sec. 724.002. **APPLICABILITY.** The provisions of this chapter that apply to suspension of a license for refusal to submit to the taking of a specimen (Sections 724.013, 724.015, and 724.048 and Subchapters C and D) apply only to a person arrested for an offense involving the operation of a motor vehicle or watercraft.

(2) On page 7, line 4, between "vehicle" and "while", insert "or watercraft".

(3) On page 9, between lines 19 and 20, insert the following appropriately numbered SECTION and renumber the subsequent SECTIONS of the bill accordingly:

SECTION 14. Section 724.042, Transportation Code, is amended to read as follows:

Sec. 724.042. **ISSUES AT HEARING.** The issues at a hearing under this subchapter are whether:

(1) reasonable suspicion or probable cause existed to stop or arrest the person;

(2) probable cause existed to believe that the person was:
(A) operating a motor vehicle in a public place while intoxicated; or

(B) operating a watercraft while intoxicated;

(3) the person was placed under arrest by the officer and was requested to submit to the taking of a specimen; and

(4) the person refused to submit to the taking of a specimen on request of the officer.

Amendment No. 5

Representative Hope offered the following amendment to Amendment No. 4:

Amend the Hope amendment to **HB 63** as follows:

(1) On page 1, line 11, strike "watercraft" and substitute "watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above".

(2) On page 1, line 13, strike "watercraft" and substitute "watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above".

(3) On page 2, line 2, strike "watercraft" and substitute "watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above".

Amendment No. 5 was adopted without objection.

Amendment No. 4, as amended, was adopted without objection.

Amendment No. 6

Representative Williams offered the following amendment to **HB 63**:

Amend **HB 63** by adding the following appropriately numbered sections and renumbering the sections of the bill accordingly:

SECTION _____. Sections 521.457(a), (b), and (f), Transportation Code, are amended to read as follows:

(a) A person commits an offense if the person operates a motor vehicle on a highway:

(1) after the person's driver's license has been canceled under this chapter if the person does not have a license that was subsequently issued under this chapter;

(2) during a period that the person's driver's license or privilege is suspended or revoked under any law of this state[:

~~[(A) this chapter;~~

~~[(B) Chapter 524;~~

~~[(C) Chapter 724;~~

~~[(D) Section 106.071, Alcoholic Beverage Code; or~~

~~[(E) Article 42.12, Code of Criminal Procedure];~~

(3) while the person's driver's license is expired if the license expired during a period of suspension ~~[imposed under:~~

~~[(A) this chapter;~~

~~[(B) Chapter 524;~~

~~[(C) Chapter 724;~~

~~[(D) Section 106.071, Alcoholic Beverage Code; or~~

~~[(E) Article 42.12, Code of Criminal Procedure];~~ or

(4) after renewal of the person's driver's license has been denied under any law of this state ~~[Chapter 706]~~, if the person does not have a driver's license subsequently issued under this chapter.

(b) A person commits an offense if the person is the subject of an order issued under any law of this state ~~[chapter or Chapter 724]~~ that prohibits the person from obtaining a driver's license and the person operates a motor vehicle on a highway.

(f) If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section or an offense under Section 601.371(a), as that law existed before September 1, 2001, the offense is a Class A misdemeanor.

SECTION _____. Section 601.371, Transportation Code, is amended to read as follows:

Sec. 601.371. OPERATION OF MOTOR VEHICLE IN VIOLATION OF SUSPENSION; OFFENSE. (a) ~~[A person commits an offense if the person operates a motor vehicle on a highway:~~

~~[(1) during a period that a suspension of the person's driver's license or nonresident's operating privilege is in effect under this chapter; or~~

~~[(2) while the person's driver's license is expired, if the license expired during a period of suspension imposed under this chapter.~~

~~[(b)]~~ A person commits an offense if the person, during a period that a suspension of the person's vehicle registration is in effect under this chapter, knowingly permits a motor vehicle owned by the person to be operated on a highway.

~~(b) [(e)]~~ It is an affirmative defense to prosecution under this section that the person had not received notice of a suspension order concerning the person's ~~[driver's license, nonresident's operating privilege, or]~~ vehicle registration. For purposes of this subsection, notice is presumed to be received if the notice was mailed in accordance with this chapter to the last known address of the person as shown by department records.

~~(c) [(d)]~~ Except as provided by Subsection ~~(d) [(e)]~~, an offense under this section is a misdemeanor punishable by:

(1) a fine of not less than \$100 or more than \$500; and

(2) confinement in county jail for a term of not less than 72 hours or more than six months.

~~(d) [(e)]~~ If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section ~~[or under Section 521.457]~~, the offense is punishable as a Class A misdemeanor.

~~(e) [(f)]~~ In this section, a conviction for an offense that involves operation of a motor vehicle after August 31, 1987, is a final conviction, whether the sentence for the conviction is imposed or probated.

SECTION _____. (a) The change in law made by this Act by the amendment of Sections 521.457 and 601.371, Transportation Code, applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

Representative Thompson raised a point of order against further consideration of Amendment No. 6 under Rule 11, Section 2 of the House Rules on the grounds that it is not germane to the bill.

The chair sustained the point of order.

The ruling precluded further consideration of the amendment.

(Speaker in the chair)

HB 63, as amended, was passed to engrossment.

HB 2065 ON SECOND READING **(by Eiland)**

HB 2065, A bill to be entitled An Act relating to the allocation of certain settlement money awarded to the state to appropriation accounts at the direction of the attorney general with the prior approval of the Legislative Budget Board.

HB 2065 was passed to engrossment.

CSHB 3088 ON SECOND READING
(by S. Turner)

CSHB 3088, A bill to be entitled An Act relating to the creation and re-creation of funds and accounts in the state treasury, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

Amendment No. 1

Representative S. Turner offered the following amendment to **CSHB 3088**:

Amend **CSHB 3088** as follows:

- (1) On page 3, line 7, strike "and".
- (2) On page 3, line 9, strike the period and substitute the following:
"; and
(10) the colonia self-help account created by **HB 2776** or **SB 1501**."
(3) On page 3, strike lines 18 and 19.
(4) On page 3, line 20, strike "(3)" and substitute "(2)".
(5) On page 3, line 21, strike the period and substitute the following:
";
(3) the owner-builder revolving loan fund created by **HB 3294** or **SB 1500**; and
(4) the colonia model subdivision revolving loan fund created by **HB 3294** or **SB 1500**."
(6) On page 4, line 16, between "**HB 2796**" and the period, insert "or to revenue deposited to the credit of the fund".
(7) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill appropriately:
SECTION _____. SEPARATE FUNDS IN THE TREASURY. Effective August 27, 2001, the following funds in the state treasury and the revenue deposited to the credit of the funds are exempt from Section 2 of this Act and are created as separate funds in the state treasury, if created by an Act of the 77th Legislature, Regular Session, 2001, that becomes law:
(1) the permanent fund for veterans' care created by **HB 515** or **SB 976**.
SECTION _____. YOUNG FARMER LOAN GUARANTEE ACCOUNT. (a) The young farmer loan guarantee account in the Texas agricultural fund is re-created by this Act. Revenue dedicated for deposit to the credit of the account under Section 58.057, Agriculture Code, or Section 502.174, Transportation Code, is rededicated by this Act for deposit to the credit of the account. Section 2 of this Act does not apply to the account or to revenue dedicated to the account.
(b) Revenue received after the effective date of this Act that is dedicated to the account shall be deposited to the credit of the account, except that grants and donations made for the purposes of the young farmer loan guarantee program shall be deposited to the credit of the account without regard to when the grant or donation was made.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative S. Turner offered the following amendment to **CSHB 3088**:

Amend **CSHB 3088** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION __. YOUNG FARMER LOAN GUARANTEE ACCOUNT. (a) The young farmer loan guarantee account in the Texas agricultural fund is re-created by this Act. Revenue dedicated for deposit to the credit of the account under Section 58.057, Agriculture Code, or Section 502.174, Transportation Code, is rededicated by this Act for deposit to the credit of the account. Section 2 of this Act does not apply to the account or to revenue dedicated to the account.

(b) Revenue received after the effective date of this Act that is dedicated to the account shall be deposited to the credit of the account, except that grants and donations made for the purposes of the young farmer loan guarantee program shall be deposited to the credit of the account without regard to when the grant or donation was made.

(c) Any unexpended interest that accrues to the credit of any successor account to the young farmer loan guarantee account in the general revenue fund, established by the comptroller in response to Chapter 1045, Acts of the 76th Legislature, Regular Session, 1999, shall be transferred to the credit of the Texas agricultural fund at the end of each fiscal year.

Amendment No. 2 was withdrawn.

Amendment No. 3

Representative S. Turner offered the following amendment to **CSHB 3088**:

Amend **CSHB 3088** on page 4, line 2, by striking the period and substituting the following:
; and

(2) the reinstatement fee revenue dedicated to the state highway fund by **SB 1329**.

Amendment No. 3 was adopted without objection.

Amendment No. 4

Representative S. Turner offered the following amendment to **CSHB 3088**:

Amend **CSHB 3088** on page 4, line 2, by striking the period and substituting the following:
; and

(2) the ferry sticker fee revenue dedicated to the state highway fund by **SB 1109**.

Amendment No. 4 was adopted without objection.

Amendment No. 5

Representative S. Turner offered the following amendment to **CSHB 3088**:

Amend **CSHB 3088** on page 4, line 2, by striking the period and substituting the following:
; and

(2) administrative fee and discount and service charge revenue dedicated to the state highway fund by **SB 487**.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

CSHB 3088 - (consideration continued)

Amendment No. 5 was withdrawn.

Amendment No. 6

Representative Farrar offered the following amendment to **CSHB 3088**:

Amend **CSHB 3088** as follows:

(1) On page 3, line 7, strike "and".

(2) On page 3, line 9, strike the period and substitute the following:
"; and

(10) the scholarship fund for architectural examination applicants re-created as an account by **HB 1706**."

Amendment No. 6 was adopted without objection.

Amendment No. 7

Representative Junell offered the following amendment to **CSHB 3088**:

Amend **CSHB 3088** as follows:

(1) On page 3, line 19, strike "and".

(2) On page 3, line 21, strike the period and substitute the following:
; and

(4) the smart jobs fund re-created as an account by **HB 3452** or **SB 321**.

(3) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION ____ TELECOMMUNICATIONS INFRASTRUCTURE FUND.

(a) Section 57.043(a), Utilities Code, is amended to read as follows:

(a) The telecommunications infrastructure fund is an account in the general revenue fund. The telecommunications infrastructure fund account is composed of the public schools account and the qualifying entities account. Section 403.095, Government Code, does not apply to the telecommunications infrastructure fund account or to the accounts that compose the fund account.

(b) Effective August 27, 2001, the telecommunications infrastructure fund is re-created as an account in the general revenue fund, and the account and the revenue deposited to the credit of the account are exempt from Section 2 of this Act.

Amendment No. 7 was adopted without objection.

CSHB 3088, as amended, was passed to engrossment. (Carter recorded voting no)

CSHB 2561 ON SECOND READING (by Dunnam)

CSHB 2561, A bill to be entitled An Act relating to creating the criminal offense of misuse of the property or services of a charter school.

INTRODUCTION OF GUESTS

The speaker recognized Representative Keffer, who introduced Tom Perini, Lisa Sanders, Charlie Dromgool, and Bill Stevens.

CSHB 2561 - (consideration continued)

CSHB 2561 was passed to engrossment. (Shields recorded voting no)

CSHB 2430 ON SECOND READING (by Naishtat, Averitt, and Kitchen)

CSHB 2430, A bill to be entitled An Act relating to a consumer assistance program for health benefit plan consumers.

CSHB 2430 was passed to engrossment.

CSHB 2134 ON SECOND READING (by Chisum)

CSHB 2134, A bill to be entitled An Act relating to the regulation of motor vehicle emissions; providing penalties.

Amendment No. 1

Representative Chisum offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** as follows:

(1) On page 4, line 10, amend Subsection (f) to read as follows:

(f) The commission:

(1) shall no less frequently than biennially, review the fee established under Subsection (e); and

(2) may use part of the fee collected under Subsection (e) to provide incentives, including financial incentives, for participation in the testing network to ensure availability of an adequate number of testing stations. [Notwithstanding limitations on fees charged for emissions testing under this chapter or for safety inspections under Chapter 548, Transportation Code, an inspection station owner, contractor, or operator may charge an additional amount of not more than \$10 for each vehicle for a combined safety inspection and emissions test for each vehicle in an affected county or a participating county if the hourly labor rate warrants an additional charge. If an inspection station owner, contractor, or operator charges an additional amount under this subsection, at least one sign must be prominently displayed outside the facility and at least one sign must be prominently displayed outside the facility and at least one sign must be prominently displayed inside the facility, in places clearly visible to the public, stating:

(1) the total fee for the inspection;

(2) the part of the fee assessed by the state;

(3) the part of the fee charged by the station in excess of the state fee and retained by the station;

(4) the hourly labor rate charged by the station;

(5) that the fee is the same whether the vehicle passes or fails the inspection; and

(6) that "Emissions inspections conducted at this station are maintained by requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.);]

- (2) On page 10, line 20, strike "ensure" and replace with "encourage"
- (3) On page 10, line 21, delete the word "that" and delete the word "exists"
- (4) On page 10, delete Subdivision (1) on lines 23 and 24 and renumber the remaining subdivisions accordingly

(Raymond in the chair)

Representative Madden moved to table Amendment No. 1.

The motion to table was lost.

Amendment No. 1 was adopted without objection.

Amendment No. 2

Representative Madden offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** on page 7, between lines 6 and 7, by inserting a new Subsection (n) to read as follows:

(n) In implementing an inspection and maintenance program under this section the commission by rule shall require a manufacturer who produces vehicles for distribution and sale in this state to provide, for a fair, reasonable, and nondiscriminatory fee, access to all recognition codes, service bulletins, and repair data related to diagnosing and repair of emissions-related malfunctions on the vehicles the manufacturer produces for distribution and sale in this state. In this subsection, "manufacturer" has the meaning assigned by Section 1.03, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes).

Representative Chisum moved to table Amendment No. 2.

The motion to table prevailed.

Amendment No. 3

Representative Madden offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** on page 7, between lines 6 and 7, by adding a new Subsection (o) to read as follows:

(o) The commission may suspend the emissions inspection program as it applies to pre-1996 vehicles in an affected county only if:

(1) the department certifies that the number of pre-1996 vehicles in the county subject to the program is 20 percent or less of the number of those vehicles that were in the county on September 1, 2001; and

(2) an alternative testing methodology that meets or exceeds U.S. Environmental Protection Agency requirements is available.

Amendment No. 4

Representative Chisum offered the following amendment to Amendment No. 3:

Amend the Madden Amendment to **CSHB 2134** on page 1, line 5, by striking the word "only"

Amendment No. 4 was adopted without objection.

Amendment No. 3, as amended, was adopted without objection.

Amendment No. 5

Representative Zbranek offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** as follows:

1) On page 9, line 4, strike "rural" and replace with "severe nonattainment"

Amendment No. 5 was adopted without objection.

Amendment No. 6

Representative Chisum offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** as follows:

(1) On page 9, line 3, after the word "Code", delete "or"

(2) On page 9, delete Subdivision 4 on lines 4 - 8.

Representative Zbranek moved to table Amendment No. 6.

The motion to table was lost.

Amendment No. 6 was adopted without objection.

Amendment No. 7

Representative Bonnen offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** as follows:

(1) On page 1, line 6, by striking "Sections 382.037-382.039" and substitute "Sections 382.037-382.0372 and Sections 382.0374-382.039".

(2) On page 1, line 8, strike "Sections 382.202-382.208" and substitute "Sections 382.202-382.207".

(3) On page 9, lines 9 through 23, strike redesignated Section 382.0373, Health and Safety Code, and appropriately renumber subsequent redesignated and added sections of that code.

(4) Strike "382.209" and substitute "382.208" at each place it appears in SECTION 1 of the bill.

(5) On page 32, between lines 7 and 8, insert a new SECTION 12, and appropriately renumber existing SECTIONS 12 and 13, to read as follows:

SECTION 12. Section 382.0373, Health and Safety Code, is repealed.

Representative Chisum moved to table Amendment No. 7.

The motion to table prevailed.

Amendment No. 8

Representative Bailey offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** on page 10, line 12, immediately after the period, by inserting the following:

"The commission at least once during each year shall review each contract entered into under this subsection to determine whether the contracting entity is performing satisfactorily under the terms of the contract. Immediately after completing the review, the commission shall prepare a report summarizing the review and send a copy of the report to the speaker of the house of representatives, the lieutenant governor, and the governor."

Amendment No. 8 was adopted without objection.

Amendment No. 9

Representative Madden offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** as follows:

(1) On page 10, line 24, after the semicolon, add "and".

(2) Beginning on page 10, line 25 and ending on page 11, line 1, strike Subdivisions (2) and (3) and substitute the following:

(2) minimizing customer inconvenience by requiring each testing facility to be able to offer BAR-97 exhaust emissions testing if the primary required test proves impractical, inaccurate, or impossible to perform.

(Speaker in the chair)

Representative Chisum moved to table Amendment No. 9.

The motion to table prevailed.

Amendment No. 10

Representative Madden offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** on page 11, between lines 1 and 2, by adding a new Subsection (f) to read as follows and relettering existing Subsection (f) and subsequent subsections appropriately:

(f) In order to meet state implementation deadlines, the commission by rule shall develop incentives as follows:

(1) by December 1, 2001, for the early commitment and purchase, by inspection stations, of testing equipment in affected counties; and

(2) by February 1, 2002, for the purchase of testing equipment in a given area of an affected county in which there are not enough inspection stations to offer testing.

Representative Chisum moved to table Amendment No. 10.

The motion to table prevailed.

Amendment No. 11

Representative Chisum offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** as follows:

(1) On page 14, line 26, delete "the Texas Department of Transportation."

(2) On page 22, line 24, delete "commission" and replace with "department"

Amendment No. 11 was adopted without objection.

Amendment No. 12

Representative Luna offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** on page 15, line 9, by striking "10 percent" and substituting "five percent".

Amendment No. 12 was adopted without objection.

Amendment No. 13

Representative Pickett offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** on page 16, between lines 13 and 14, by adding a new Subdivision (1) to read as follows and appropriately renumbering existing Subdivision (1) and subsequent subdivisions:

(1) the vehicle is capable of being operated;

Amendment No. 13 was adopted without objection.

Amendment No. 14

Representative Pickett offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** in SECTION 1 of the bill, in Section 382.213(c), Health and Safety Code, (Page 20, line 26), by inserting a new Subdivision (1) to read as follows and by renumbering the existing Subdivisions of Subsection (c) accordingly:

"(1) is repaired and brought into compliance;"

Amendment No. 14 was adopted without objection.

Amendment No. 15

Representative Chisum offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** on page 25, between lines 9 and 10, by inserting a new subsection (b) to read as follows and renumbering the remaining subsections accordingly:

(b) Notwithstanding Subsection (a), this section does not apply to a vehicle which is a 1996 or newer model which has less than 50,000 miles.

Amendment No. 15 was adopted without objection.

Amendment No. 16

Representative Madden offered the following amendment to **CSHB 2134**:

Amend **CSHB 2134** by adding a new Section 7 and a new Section 8 as follows, renumbering the subsequent sections, lines, pages, etc., to accommodate these new sections:

SECTION 7. Subchapter A, Chapter 548, Transportation Code, is amended by adding Section 548.006 to read as follows:

Sec. 548.006. ADVISORY COMMITTEE. (a) An advisory committee consisting of six members shall:

(1) advise the department on the department's rules relating to the certification of inspection stations and inspectors and operations of the emissions testing program under this chapter;

(2) make recommendations to the department relating to the content of rules involving the operation of the emissions testing program and certification of inspection stations and inspectors; and

(3) perform any other advisory function requested by the department in administering this chapter.

(b) The commissioners shall appoint three members of the committee as follows:

(1) one person to represent inspection station owners and operators;

(2) one person to represent manufacturers of motor vehicle emissions inspection devices; and

(3) one person to represent the public interest.

(c) Each member of the conservation commission shall appoint one member of the committee. The member appointed by the presiding officer of the conservation commission shall serve as the presiding officer of the committee.

(d) Committee members serve staggered three-year terms.

(e) A vacancy on the committee is filled in the same manner as other appointments to the committee.

(f) A member of the committee is not entitled to compensation, but is entitled to reimbursement of the member's travel expenses as provided in the General Appropriations Act for state employees.

(g) The committee may elect an assistant presiding officer and a secretary from among its members and may adopt rules for the conduct of its own activities.

(h) The committee is entitled to review and comment on rules to be considered for adoption by the commission of the department under Subchapter F or G before the rules are proposed.

SECTION 8. (a) Not later than January 1, 2002, the public safety commissioners shall appoint to the advisory committee created under Section 548.006, Transportation Code, as added by this Act:

(1) a representative of inspection station owners and operators to serve a one-year term;

(2) a representative of manufacturers of motor vehicle emissions inspection devices to serve a two-year term; and

(3) a representative of the public interest to serve a three-year term.

(b) Not later than January 1, 2002, the members of the Texas Natural Resource Conservation Commission shall appoint members to the advisory committee created under Section 548.006, Transportation Code, as added by this Act, as follows:

(1) the presiding officer of the commission shall appoint a member to a three-year term;

(2) one member other than the presiding officer shall appoint a member to a one-year term; and

(3) one member other than the presiding officer shall appoint a member to a two-year term.

Amendment No. 16 was adopted without objection.

A record vote was requested.

CSHB 2134, as amended, was passed to engrossment by (Record 359): 110 Yeas, 35 Nays, 1 Present, not voting.

Yeas — Allen; Averitt; Bailey; Bosse; Brown, B.; Brown, F.; Burnam; Capelo; Carter; Chavez; Chisum; Christian; Coleman; Cook; Corte; Counts; Crownover; Danburg; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Dutton; Ehrhardt; Eiland; Ellis; Farabee; Farrar; Flores; Gallego; George; Geren; Giddings; Glaze; Goodman; Gray; Green; Gutierrez; Haggerty; Hardcastle; Hawley; Hilderbran; Hinojosa; Hochberg; Homer; Hope; Hopson; Howard; Hunter; Janek; Jones, D.; Jones, E.; Junell; Keffer; King, P.; King, T.; Kitchen; Kolkhorst; Krusee; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Martinez Fischer; Maxey; McCall; McClendon;

Menendez; Moreno, J.; Moreno, P.; Morrison; Naishtat; Najera; Nixon; Oliveira; Olivo; Pickett; Pitts; Puente; Ramsay; Rangel; Raymond; Reyna, A.; Salinas; Seaman; Smith; Smithee; Solis; Swinford; Telford; Thompson; Truitt; Turner, B.; Uher; Uresti; Villarreal; Walker; West; Williams; Wise; Wohlgemuth; Wolens; Woolley; Yarbrough.

Nays — Berman; Bonnen; Brimer; Callegari; Clark; Crabb; Craddick; Denny; Edwards; Elkins; Garcia; Hamric; Hartnett; Heflin; Hill; Hodge; Hupp; Isett; Jones, J.; Keel; McReynolds; Merritt; Miller; Mowery; Noriega; Reyna, E.; Ritter; Sadler; Shields; Solomons; Talton; Tillery; Turner, S.; Wilson; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Alexander.

Absent — Goolsby; Grusendorf; Hilbert.

STATEMENTS OF VOTE

I was shown voting yes on Record No. 359. I intended to vote no.

Delisi

I was show voting yes on Record No. 359. I intended to vote no.

McCall

RULES SUSPENDED

Representative Gray moved to suspend the 5-day posting rule to allow the Committee on Public Health to meet at 8:30 a.m. tomorrow in E2.030 to consider pending business in a public hearing.

The motion prevailed without objection.

Representative Gallego moved to suspend the 5-day posting rule to allow the Committee on Natural Resources to meet in a public hearing tomorrow and May 11.

The motion prevailed without objection.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

County Affairs, upon adjournment today, Desk 56, to consider senate bills.

Rules and Resolutions, upon adjournment today, Desk 133, for a formal meeting, to consider the calendar.

Natural Resources, 8 a.m. tomorrow and May 11, E2.028, for a public hearing, to consider pending business and **SB 2**.

Public Health, 8:30 a.m. tomorrow, E2.030, for a public hearing, to consider pending business.

STATEMENTS OF VOTE

I missed several votes (Record No. 350, motion to suspend rules for

consideration of the calendar; Record No. 351, **CSHB 2351**, Amendment No. 1; and Record No. 354, **CSHJR 44**) today because I was working on the Appropriations Bill at the chairman's request.

Eiland

I was in the house but away from my desk. I would have voted no on Record No. 350 (the motion to suspend rules for consideration of the calendar).

Krusee

HB 2107 - STATEMENT OF LEGISLATIVE INTENT

On third reading of **HB 2107**, "intent" language was read into the record. Certain aspects of that language were not my intent nor I believe accurately reflect legislative intent.

Wolens

ADJOURNMENT

Representatives B. Turner and Dunnam moved that the house adjourn until 10 a.m. tomorrow in memory of Senior DPS Trooper Richard Cottle of Waco, father of Chatt Cottle, DPS Trooper at the Capitol.

The motion prevailed without objection.

The house accordingly, at 10:54 p.m., adjourned until 10 a.m tomorrow.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HR 983 (By Cook, et al.), Commending the Texas Colorado River Floodplain Coalition, supporting efforts by the coalition and state agencies to enhance flood and emergency management, and soliciting any report or recommendations resulting from their collaboration.

To Natural Resources.

HR 991 (By Gallego), Honoring C. V. Uranga of San Antonio on the occasion of his 80th birthday.

To Rules & Resolutions.

HR 992 (By Gallego), In memory of Clifton R. Pearce of Alpine.

To Rules & Resolutions.

HR 993 (By Hochberg), Honoring St. Luke's Hospital for receiving recognition for excellence in nursing services.

To Rules & Resolutions.

HR 995 (By Krusee), Honoring Mike and Starr Freeman of Round Rock on the occasion of their 20th wedding anniversary.

To Rules & Resolutions.

HR 996 (By Naishtat), In memory of Phyllis Chamlee Cobb of Austin.

To Rules & Resolutions.

HR 997 (By Deshotel), Honoring the 2000-2001 Ozen High School boys basketball team for winning the UIL Class 4A state championship.

To Rules & Resolutions.

SB 32 to Transportation.

SB 174 to Ways & Means.

SB 367 to Human Services.

SB 455 to Public Safety.

SB 853 to State Affairs.

SB 868 to Energy Resources.

SB 1120 to Criminal Jurisprudence.

SB 1226 to County Affairs.

SB 1317 to Pensions & Investments.

SB 1697 to Natural Resources.

SB 1743 to Public Education.

SB 1817 to Public Education.

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 49

HB 244, HB 402, HB 506, HB 767, HB 768, HB 1478, HB 1586, HB 1737, HB 1788, HB 2218, HB 2437, HB 2840, HB 2908, HB 3335, HCR 8

Senate List No. 25

SB 232, SB 288, SB 571, SB 832, SB 1185, SB 1196, SB 1380

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1**MESSAGE FROM THE SENATE
SENATE CHAMBER**

Austin, Texas
Wednesday, May 9, 2001

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 1687 Kolkhorst SPONSOR: Ogden
Relating to the powers and duties of the Texas Animal Health Commission.
(AMENDED)

HB 2258 Maxey SPONSOR: Moncrief
Relating to the identification of certain nursing home residents having a mental illness or mental retardation.
(COMMITTEE SUBSTITUTE/AMENDED)

HCR 276 Homer SPONSOR: Ratliff
Paying tribute to the late Thomas D. "Tom" Wells of Paris for his public service.

HCR 277 Homer SPONSOR: Ratliff
In memory of J. C. Fisher, Jr., of Cooper.

SB 107 Barrientos
Relating to requiring sex offenders released on community supervision, parole, or mandatory supervision to maintain a certain distance from any premises where children frequently gather.

SB 1214 Madla
Relating to the financing and disposition of certain airport and air navigation facilities.

SB 1558 Madla
Relating to defense base development authorities.

SB 1809 Zaffirini
Relating to the issuance of permits for the operation of oversize and overweight vehicles on certain highways by the City of Laredo and by the City of El Paso; providing penalties.

SJR 6 Duncan
Proposing a constitutional amendment authorizing the legislature to exempt from ad valorem taxation tangible personal property held at certain locations

only temporarily for assembling, manufacturing, processing, or other commercial purposes.

Respectfully,

Betty King
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER

Austin, Texas

Wednesday, May 9, 2001 - 2

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 272 Ramsay SPONSOR: Ratliff
Honoring the educators of the Mount Vernon Independent School District for their outstanding service.

HJR 52 Cook SPONSOR: Armbrister
Proposing a constitutional amendment clearing land titles by relinquishing and releasing any claim of sovereign ownership or title to an interest in certain lands in Bastrop County.

HJR 53 Cook SPONSOR: Armbrister
Proposing a constitutional amendment granting the legislature authority to release the state's interest in land that is held by a person in good faith under color of title.

Respectfully,

Betty King
Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE
SENATE CHAMBER

Austin, Texas

Wednesday, May 9, 2001 - 3

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HB 16 Corte SPONSOR: Truan
Relating to a late application by a disabled veteran for an exemption from ad valorem taxation.

HB 899 Thompson SPONSOR: West, Royce
Relating to a court order for retroactive child support or for the abeyance of the enforcement of child support arrearages.
(COMMITTEE SUBSTITUTE)

HB 2384 Carter SPONSOR: Moncrief
Relating to certain firefighter and police officer employment matters in certain municipalities.
(AMENDED)

THE SENATE HAS CONCURRED IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES:

SB 31 (29 Yeas, 0 Nays, 1 Present Not Voting)

SB 289 (viva-voce vote)

SB 660 (viva-voce vote)

SB 661 (29 Yeas, 0 Nays, 1 Present Not Voting)

SB 685 (viva-voce vote)

SB 732 (viva-voce vote)

SB 753 (viva-voce vote)

SB 874 (29 Yeas, 0 Nays, 1 Present Not Voting)

SB 1095 (viva-voce vote)

SB 1154 (viva-voce vote)

SB 1202 (viva-voce vote)

SB 1629 (29 Yeas, 0 Nays, 1 Present Not Voting)

THE SENATE HAS REFUSED TO CONCUR IN HOUSE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

SB 415
Senate Conferees: Carona - Chair/Madla/Moncrief/Sibley/Zaffirini

Respectfully,

Betty King
Secretary of the Senate

Message No. 4**MESSAGE FROM THE SENATE
SENATE CHAMBER**

Austin, Texas

Wednesday, May 9, 2001 - 4

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:**SB 322** Lucio

Relating to the continuation and functions of the Texas Department of Housing and Community Affairs and to other matters relating to housing or community development, including the creation of the Manufactured Housing Board and the Office of Rural Community Affairs; providing penalties.

Respectfully,

Betty King
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

May 8Business & Industry - **SB 1323**Criminal Jurisprudence - **SB 1033, SB 1174**Elections - **SB 1464, SB 1491**Financial Institutions - **HB 3454**Higher Education - **SB 1595**Human Services - **SB 1536, SB 1590**Land & Resource Management - **SB 1806**

Licensing & Administrative Procedures - **HB 2335, HB 2490, HB 2916,**
HB 3033, HB 3409, HB 3700, SB 257, SB 1667

Natural Resources - **SB 1444**Public Health - **SB 616, SB 789, SB 1053**Public Safety - **SB 293**

State Affairs - **SB 482, SB 587, SB 757, SB 799**

State, Federal & International Relations - **HCR 265, SB 1799, SB 1815**

Transportation - **SB 4, SB 342, SJR 16**

ENGROSSED

May 8 - HB 15, HB 45, HB 149, HB 287, HB 428, HB 503, HB 539, HB 541, HB 547, HB 563, HB 715, HB 811, HB 964, HB 1447, HB 1537, HB 1610, HB 1617, HB 1633, HB 1706, HB 1872, HB 1887, HB 2043, HB 2119, HB 2124, HB 2230, HB 2240, HB 2306, HB 2340, HB 2341, HB 2365, HB 2368, HB 2504, HB 2518, HB 2638, HB 2645, HB 2650, HB 2719, HB 2827, HB 2950, HB 2978, HB 3153, HB 3203, HB 3209, HB 3296, HB 3347, HB 3364, HB 3391, HB 3433, HB 3441, HB 3527, HB 3528, HB 3552, HB 3691, HB 3695, HB 3696

ENROLLED

May 8 - HB 198, HB 244, HB 402, HB 482, HB 506, HB 767, HB 768, HB 780, HB 1175, HB 1586, HB 2437, HB 2840, HB 3335, HCR 6, HCR 8, HCR 32, HCR 44, HCR 45, HCR 46, HCR 47, HCR 80

SENT TO THE GOVERNOR

May 8 - HCR 6, HCR 32, HCR 44, HCR 45, HCR 46, HCR 47, HCR 80

SIGNED BY THE GOVERNOR

May 8 - HB 1362